Department of Labour, Canada

COMBINES INVESTIGATION ACT

INVESTIGATION INTO

AN ALLEGED COMBINE

IN THE MANUFACTURE AND SALE OF

PAPERBOARD SHIPPING CONTAINERS

AND RELATED PRODUCTS

Report of Commissioner

March 14, 1939

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1939

Price, 25 cents

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OTTAWA, March 14, 1939.

Hon. NORMAN McL. ROGERS,
Minister of Labour,
Ottawa.

SIR,—I have the honour to submit to you the following report of an investigation under the Combines Investigation Act into the organization and operation of certain combinations in connection with the manufacture and sale of corrugated and solid fibreboard shipping containers and related products in Canada. This investigation has been made pursuant to your letter of April 11, 1938, with the view of determining whether a combine exists in connection with the manufacture and sale of corrugated paper boxes, fibreboard boxes, and related products, including paperboard and fibreboard used in the manufacture of these classes of shipping containers.

The investigation has consisted primarily of an examination of the agreements and operations of two organizations: Container Materials, Limited, whose members and associated companies represent all but one of the manufacturers of corrugated shipping containers in Canada; and Shipping Case Material Manufacturers Association, which comprises the four principal Canadian manufacturers of the paperboard used in the production of these classes of shipping containers. Hearings were held in Toronto and Montreal, the two principal centres for the manufacture of corrugated boxes. Twenty-one witnesses were examined under oath and the taking of evidence occupied thirty days. At the conclusion of the inquiry argument by counsel representing the two trade associations under investigation and certain of the manufacturers, as well as by commission counsel, was heard in Ottawa.

I should like to make acknowledgment here of the valuable services of Mr. J. C. McRuer, K.C., who acted as advisory counsel throughout the inquiry, and of Mr. J. L. McLennan, who conducted the examination of most of the witnesses.

Since September, 1931, all the leading manufacturers of corrugated paper boxes have been either members of Container Materials, Limited, or associated with it under arrangements to fix prices and regulate conditions of sale. The following manufacturers, with the exception of Gair Company, Canada, Limited, were original shareholders in Container Materials, Limited:—

Canadian Wirebound Boxes. Limited	Toronto and Montreal
Hinde and Dauch Paper Company of Canada, Limited	Toronto and Montreal
The Corrugated Paper Box Company, Limited[1]	Toronto
Hilton Brothers, Limited[1]	Winnipeg
Gair Company, Canada, Limited	Toronto
Concord Shipping Cartons, Limited[2]	Toronto
Fibre Boxes, Limited[2]	Toronto
Firstbrook Boxes, Limited[2]	Toronto
Corrugating and Container Company, Limited[2]	Hamilton
London Shipping Containers, Limited[2]	London
Canadian Containers, Limited[2]	Windsor
Shipping Containers, Limited	Montreal
Standard Paper Box, Limited	Montreal

[1] Hilton Brothers, Limited, Winnipeg, is not listed as shareholder; it is a wholly owned subsidiary of The Corrugated Paper Box Company, Limited, and is bound by the latter company's agreements with Container Materials, Limited.

[2] Absorbed by Gair Company, Canada, Limited, in 1936.

Martin-Hewitt Containers, Limited	Peterborough
Hygrade Corrugated Products, Limited	London
Kitchener Paper Box Company[1]	Kitchener
Martin Paper Products, Limited	Winnipeg
Canadian Boxes, Limited	Vancouver

The present membership includes all the companies in the above list with the exception of the Kitchener Paper Box Company and the firms absorbed by Gair Company, Canada, Limited.

The following two companies did not actually become shareholders of Container Materials, Limited, but made deposits to guarantee observance of its regulations, and became members in all respects save that of the quota arrangement:—

Maritime Paper Products, Limited	Halifax
Wilson Box and Lumber Company, Limited[2]	Fairville, N.B.

The following companies have entered into agreements to observe the prices fixed by Container Materials, Limited:—

Dominion Corrugated Paper Company, Limited	Toronto
O. and S. Corrugated Products Company	Toronto
G. W. Hendershot Corrugated Paper Company, Limited	Hamilton
Kraft Containers, Limited	Hamilton
Superior Box Company, Limited	Kitchener

Each of the companies in this third group has other connections with Container Materials, Limited, which are described in Sections VI and VII of this report.

Shipping Case Material Manufacturers Association has operated since January, 1935, to regulate prices, conditions of sale and standards of quality of paperboard used for shipping containers. The four manufacturers now comprising this association are:—

Bathurst Power and Paper Company, Limited	Montreal
Brompton Pulp and Paper Company, Limited	Montreal
Gair Company, Canada, Limited[3]	Toronto
Hinde and Dauch Paper Company of Canada, Limited	Toronto

The operations of these two associations, Container Materials, Limited, and Shipping Case Material Manufacturers Association, have resulted in the development of comprehensive systems of rules and restrictions under which almost the entire production of the respective industries is marketed. The primary purpose of the development of these measures of private control has been to eliminate price competition on the part of member companies and associated manufacturers.

Enforcement of these regulations has involved constant check and review of the records and transactions of the member companies and affiliated manufacturers by auditors acting for the management of the associations. Substantial financial deposits, which have been increased during the period of operation, were made by member companies to guarantee observance of the agreements. Penalties are imposed by the association management for any infractions of the price regulations. The maintenance of fixed prices has led to the regulation of standards of quality of both shipping containers and paperboard and to the establishment of control over other features of manufacturing and trading practices of the individual companies. An essential feature of the activities of Container Materials, Limited, has been the operation of a quota system by which member companies were compensated if they failed to reach allotted sales quotas and penalized if they exceeded these quotas. Close attention has been given by this association to the elimination of outside competition by inducing new manufacturers to adhere to the price agreements and, in certain instances, by the purchase of competing plants and the subsidizing of potential competitors.

[1] Plant taken over by Superior Box Company, Limited, in 1932.
[2] Name changed in March, 1938, to Wilson Boxes, Limited.
[3] In 1936 Gair Company, Canada, Limited, absorbed Dominion Boxboards, Limited, which was an original member of the association.

I. THE PAPERBOARD SHIPPING CONTAINER INDUSTRY

The main products of the paper box industry may be divided into three groups (*a*) folding boxes, (*b*) set-up or stiff boxes, and (*c*) corrugated and solid fibreboard boxes or shipping cases. Folding and set-up boxes are used chiefly for package goods ready for sale, while corrugated and solid fibreboard boxes, hereinafter referred to as shipping containers, are used almost exclusively for shipping purposes either in domestic or export trade. While manufacturers tend to specialize in the production of either folding and set-up boxes or shipping containers, a number of the larger firms engage in all lines of production, including, in some cases, the manufacture of the paperboard.

The shipping container industry, which with the related branch of the paperboard industry is the subject of this inquiry, includes the manufacture of several other paperboard products in addition to shipping cases. The use of corrugated and solid fibreboard shipping containers has increased substantially in the past two decades with advances in transportation facilities and the increasing use of ready-packaged and branded merchandise. The corrugated paper box is now the most important single type of shipping container in use in Canada. On the basis of value of production it outranks wooden boxes and crates, wooden barrels and other forms of shipping cases. Because of its relative cheapness and adaptability the corrugated paper box seems likely to maintain its leading position in the container field. These advantages have led to its being substituted, with respect to an increasing number of products, for wooden containers, which are now used largely for heavier and bulkier shipments. Corrugated and solid fibre containers are being used also for a variety of shipping and display purposes for which other types of containers had never been used. The advantages claimed for corrugated and solid fibre containers are generally those of relative cheapness, lightness in weight, adaptability to automatic filling and sealing, protection afforded through resiliency of material, reduced space required for storage and ease of assembly and labelling. They are supplied to the user in bundles of scored cartons which are ready for use when opened. When the cartons are packed the flaps are glued or stitched. The printing of these shipping containers is combined with other processes in their manufacture and consequently requires no separate operation.

The manufacture of paperboard shipping containers commenced in Canada shortly after the beginning of the century, but the demand remained relatively small until toward the close of the world war. They were not accepted under the freight classification of American railways until 1914. According to the recollection of witnesses appearing in the present inquiry there were four or five firms manufacturing containers of this type in Canada prior to the war. Among these were the Hinde and Dauch Paper Company of Canada, Limited, which had commenced operations about 1910, and the Martin Corrugated Paper and Box Company, Limited, which was formed about 1903, both located in Toronto. The Thompson and Norris Company of Canada, Limited, in Niagara Falls and the Standard Paper Box Company in Montreal were also producing shipping containers in this period. The number of firms increased only slightly during the war period; by 1919 there were seven manufacturers, one with a branch plant, and by 1925 the number had increased to nine. The following five years witnessed a rapid increase in the number of manufacturers and in the capacity of the industry, so that by 1930 there were nineteen plants producing corrugated and solid fibre containers. The extent to which the demand for shipping con-

tainers had grown in the same period cannot be accurately determined owing to the lack of statistics relating to volume of output. The available records suggest that between 1926 and 1929 output rose between 80 and 100 per cent. The value of corrugated boxes produced in the same period increased from $3,275,000 to $5,205,000.

The onset of the business depression in the latter part of 1929 found the industry expanded to meet the requirements of a growing market for paperboard containers. The contraction in general business in 1930 was accompanied by a decline in their production. In 1931, however, in spite of a further contraction in general business operations, the production of shipping containers appears to have increased over the 1930 level. By 1933 the volume of output exceeded that of 1929 and increased production has been reported in succeeding years. In 1937 the output of corrugated and fibre boxes was probably double that of 1929; the value of production of corrugated boxes alone was $10,002,533 compared with $5,205,556 in 1929. Although six new producers entered the field between 1930 and 1937 the number of individual companies declined, owing chiefly to the absorption of six firms by Gair Company, Canada, Limited, in 1936.

The production of all companies reporting to the Dominion Bureau of Statistics is shown in the following table for the period 1930 to 1937, together with sales reported to Container Materials, Limited, commencing with the year 1932.

TABLE 1.—PRODUCTION OF CORRUGATED AND SOLID FIBREBOARD BOXES AND SALES OF CONTAINER MATERIALS, LIMITED, 1930–1937

Year	**Production** (Dominion Bureau of Statistics)			**Sales** reported to Container Materials, Limited, by Quota and Non-Quota Companies	
	Corrugated Boxes	Fibreboard Boxes	Total Shipping Containers	Quota Companies	Non-Quota Companies (1)
	$	$	$	$	$
1930	4,624,339	811,834	5,436,173	....	....
1931	4,795,173	634,980	5,430,153	....	....
1932	4,815,776	696,497	5,512,273	4,924,672	....
1933	5,161,280	508,697	5,669,977	5,379,708	....
1934	6,810,043	749,027	7,559,070	6,564,688	
1935	7,491,683	762,571	8,254,254	7,229,984	....
1936	8,981,426	822,501	9,803,927	8,056,364	....
1937	10,002,533	890,978	10,893,511	9,110,156	1,766,203 (2)

(1) The non-quota companies in 1937 included Wilson Box and Lumber Company, Limited, Fairville, N.B.; Maritime Paper Products, Limited, Halifax; Superior Box Company, Limited, Kitchener; O. and S. Corrugated Paper Company, Toronto; G. W. Hendershot Corrugated Paper Company, Limited, Hamilton; and Kraft Containers, Limited, Hamilton.

(2) Information on total sales of all associated companies was not obtained for the years prior to 1937.

II. TRADE COMBINATIONS IN THE INDUSTRY PRIOR TO 1931

In the immediate post-war period the small number of firms manufacturing paperboard shipping containers found the demand for their products steadily advancing. In the early twenties, according to the statement of more than one witness, the majority of manufacturers agreed upon a common method of figuring prices which tended to produce substantial uniformity. When in 1925 a new firm began producing, active price competition developed but prices were soon stabilized at a lower level than had previously prevailed. The number of manufacturers increased substantially between 1927 and 1929 and some of these began to offer containers at prices lower than those based on the agreed method of figuring. No general changes in prices were made by the older firms until October, 1929. In the United States, where the shipping container industry was likewise growing rapidly, there was a substantial reduction in prices in 1928 and again in 1929. Prices of jute liner board and corrugating strawboard, the principal paper products used in the manufacture of these containers at that time, were also reduced in the United States in 1928.

The evidences of price competition which became apparent among Canadian manufacturers with the entrance of the new box plants in the late twenties disappeared with the formation in 1929 of an organization known as the Canadian Corrugated and Fibre Box Manufacturers Association under the secretarial guidance of Messrs. Hardy & Badden, a Toronto firm of trade association executives which now performs similar functions for the successor association, Container Materials, Limited. The records of the Canadian Corrugated and Fibre Box Manufacturers Association have not been available and only meagre details of its operations have been secured through the examination of persons who participated in its activities. One witness stated that in 1929 practically all manufacturers signed an agreement under which they undertook to establish their prices on a uniform basis, with agreed discounts from the list prices. This agreement was made in October, 1929, at the onset of the severe business depression, and under it prices were fixed at the level occasioned by the competition of the new firms, which was from five to fifteen per cent below the previously prevailing scale. United States prices of shipping containers had fallen by this time at least twenty-five per cent below their 1927 level. They declined further between 1930 and 1932. Prices of the jute liner in the United States declined in the latter part of 1929 and fell rapidly in the early part of 1930, with further declines until 1932.

When the Canadian Corrugated and Fibre Box Manufacturers Association commenced operating in 1929 it included as members all firms manufacturing corrugated boxes in Eastern Canada and some located elsewhere. Building Products, Limited, which began to manufacture solid fibre boxes in Quebec in 1929, was not a full member of the association but did maintain a deposit with the secretary as a guarantee that it would conform to association regulations. In Western Canada, Martin Paper Products, Limited, which commenced operations in Winnipeg in 1929, is not recorded as a member of the association, and its relations, if any, with the association have not been determined. Canadian Boxes, Limited, of Vancouver, became a member of the association. In addition to an agreement on prices a quota scheme was operated by the association. Members were allotted sales quotas representing certain percentages of the total sales of all companies. Those manufacturers who failed to reach their quotas were compensated by payments from those members who exceeded theirs.

The Canadian manufacturers, following the signing of the agreement, attempted to maintain prices in the face of lower business activity in Canada and the drastic decline in the prices of boxes and box materials in the United States. The Canadian situation was further affected by the actual or potential competition of new plants and the development of a new shipping case material in the form of kraft paperboard.

The members of the Canadian Corrugated and Fibre Box Manufacturers Association held to the agreement of October, 1929, until the close of 1930. Various reasons have been given for the break-up of the association at that time and undoubtedly personal and inter-company differences contributed to the dissolution. It seems clear, however, that the determining factors were the economic developments which have just been mentioned. The actual break in the price agreement occurred in January, 1931, but prior to that time firms had been offering lower quotations in anticipation of the breakdown of the association.

Once companies were no longer bound to respect the uniform price agreement, strong price competition ensued and was carried on until September, 1931. During that summer efforts were made to revive the association and it appears that the firms with plants in Montreal succeeded in establishing a working arrangement in regard to prices in this territory prior to September.

The opinion expressed by representatives of the industry was to the effect that the open competition of this period did not affect the relative standing of the various companies in regard to volume of sales and had no effect on the demand for shipping containers. This opinion is not supported by an examination of the available data. It has already been pointed out, in the preceding section, that the information available indicates that while there was some reduction in output in 1930, the trend, contrary to the general movement in business, was reversed in 1931 and production increased in each of the succeeding years.

Mr. F. C. Hayes, of Shipping Containers, Limited, Montreal, gave the following evidence in regard to the position of individual companies, including his own, as a result of competitive conditions during part of 1931:—

> "Q. Do you know whether or not your company increased its sales in relation to total sales during the period when prices were open?—A. I don't think we increased our sales. In fact I don't think anybody did. That was the idea everybody had at the time, that the increased sales that they would secure at a lower price would offset their overhead, but when the whole thing was over and the final figures were taken, I believe everybody was practically on the same basis they were when they went into it.
>
> "Q. On the basis of total sales, percentage of sales to total sales?—A. Yes, I am pretty sure that our position was practically identical." (Evidence, p. 2027)

Mr. Hayes is right in so far as his own company is concerned, as the sales of Shipping Containers, Limited, for reasons which will be discussed later, have tended to follow closely the trend for the industry as a whole. But other members of the association found their positions substantially altered in 1932. The following table shows the proportion that the 1932 sales of each company form of their sales in the 13-month period ending September 30, 1930. The proportions range from 37·01 per cent in the case of Concord Shipping Cartons, Limited, to 147·43 per cent in the case of Canadian Wirebound Boxes, Limited. The competitive conditions of 1931 were not alone responsible for these variations. Canadian Wirebound Boxes, Limited, which had been manufacturing corrugated boxes in Montreal, opened a similar plant in Toronto in this period in connection with its wirebound box operations. In the same period the Hinde and Dauch Paper Company of Canada, Limited, lost one large account to a new box plant but retained the business of supplying the board. Whatever the reasons it is clear that the positions of the various companies did not remain the same in relation to each other.

Table 2.—SALES OF QUOTA COMPANIES FOR THE CALENDAR YEAR 1932 SHOWN AS PERCENTAGES OF THEIR SALES FOR THE THIRTEEN MONTHS ENDED SEPTEMBER 30, 1930[1]

	Percentage
Concord Shipping Cartons, Limited	37·01
Hinde and Dauch Paper Company of Canada, Limited	56·36
The Corrugated Paper Box Company, Limited	57.30
Corrugating and Container Company, Limited	65·56
Standard Paper Box, Limited	66·07
Shipping Containers, Limited	69·72
Fibre Boxes, Limited	72·64
Canadian Boxes, Limited	74·33
Firstbrook Boxes, Limited	77·10
Canadian Containers, Limited	83·28
London Shipping Containers, Limited	84·14
Hygrade Corrugated Products, Limited	86·82
Canadian Wirebound Boxes, Limited	147·73
All quota companies	67·05

When signs of possible disintegration of the price agreement had appeared in 1930, steps had been taken to form an incorporated company to provide " a more permanent basis of operation " for the combination. The functioning of the new organization was delayed after its incorporation on December 31, 1930, until agreement on prices could be reached amongst the box manufacturers and a definite undertaking given by each firm in the form of signed contracts. In September, 1931, as soon as the manufacturers agreed to re-establish price control, the Canadian Corrugated and Fibre Box Manufacturers Association was revived and regulations were established under the name of this organization until the necessary contracts were completed with the new incorporated body, Container Materials, Limited.

The re-establishment of price control in the fall of 1931 was described as follows in a letter dated October 3, 1931, by R. L. Stephenson, general manager of London Shipping Containers, Limited:

> " On the 22nd September, after many previous meetings, it was finally decided to stop the prevailing low prices which were existent all over the country by establishing a definite tariff on regular containers of 45 per cent Below List. Many other items were taken into the picture, and as a matter of fact the whole net result was simply to co-operate with the Montreal manufacturers, who had apparently been working together on the revised schedule for the past couple of months." (Exhibit 277)

At the meeting on September 22, 1931, the box manufacturers entered into the following agreement:—

> " The undersigned manufacturers hereby approve the form of agreement hereto annexed and agree and undertake one with the other to properly execute same when engrossed and they authorize Messrs. Hardy & Badden to add the appropriate figures and percentages, and they further agree that until the company mentioned in the said agreement is ready to and does function that they will maintain the prices adopted by the undersigned by resolution at meeting of this date, which shall be deemed to be a meeting of the present Association, and binding as such, and that Messrs. Hardy and Badden have full power to deal with deposits as Secretary of the present Association and to transfer same to the said company.
>
> " The only conditions to be fulfilled are namely, that satisfactory arrangements are made with Martin Paper Products, Limited, Winnipeg." (Exhibit 2)

The following companies signed the undertaking:—

Hygrade Corrugated Products, Limited.
Hinde and Dauch Paper Company of Canada, Limited.
Canadian Containers, Limited.
Firstbrook Boxes, Limited.
The Corrugated Paper Box Company, Limited.
Corrugating and Container Company, Limited.
Kitchener Paper Box Company.
Fibre Boxes, Limited.
Canadian Wirebound Boxes, Limited.

[1] Including only companies operating under quotas in both periods.

Martin-Hewitt Containers, Limited.
Standard Paper Box, Limited.
Shipping Containers, Limited.
Concord Shipping Cartons, Limited.
London Shipping Containers, Limited.

Canadian Boxes, Limited, of Vancouver, which had been a member of the association, was not recorded as a signatory, but became a party to the agreements of the new organization. Martin-Hewitt Containers, Limited, Peterborough, which was represented at the meeting, had commenced operations in 1930, after the organization of the earlier association.

On the same day a meeting of the Canadian Corrugated and Fibre Box Manufacturers Association was held at which steps were taken to implement the agreement outlined above. The following were among the resolutions approved at this meeting of the association:—

"*Resolved:*

That all outstanding fines or violations be waived.

Resolved:

That all settlements be made in full up to December 31, 1930, with the exception of moneys due to Messrs. Hinde and Dauch Paper Company from the pool for the three months ending December 31, 1930. Messrs. Hinde & Dauch Paper Company to forfeit all credits due to them from the pool for the three months October, November, and December, 1930, and the net balance of this amount after paying all others having credits in the same period is to be divided *pro rata* and returned to those contributing during the three months in question. All of the above is conditional upon the company agreement being completed and is to be considered a final and full settlement of all outstanding obligations in this Association.

Resolved:

That members shall not have the privilege of meeting the prices, terms and conditions on any outstanding and unfilled orders, contracts and quotations.

Resolved:

That any further outstanding orders, quotations and contracts not already registered must be filed with the Secretary not later than Thursday, September 24, 1931.

Resolved:

That effective forthwith schedule what is known as the Montreal schedule as submitted at this meeting with a discount basis of 45 per cent is adopted for the Provinces of Ontario and Quebec with the exception that the special discount to glass companies is cancelled and the 45 per cent discount will apply on their enquiries and orders.

Resolved:

That schedule of prices adopted at this time shall be for immediate delivery only.

Resolved:

That the deposit to be provided with the company agreement shall be on the basis of $500 for each 1 per cent holding, with a maximum of $10,000 and a minimum of $2,500."
(Exhibit 3, pp. 1 and 2)

The effects of these resolutions were: (1) to settle all accounts arising out of the pool and penalty system of Canadian Corrugated and Fibre Box Manufacturers Association; (2) to establish fixed prices for shipping containers throughout the provinces of Ontario and Quebec; and (3) to provide for the establishment of the scale of deposits as guarantee of the maintenance of prices and other matters as soon as the new form of organization was functioning.

The box manufacturers who had entered into this agreement were informed on September 29, 1931, that the two Manitoba manufacturers had agreed on a scale of prices. Similar information was given on October 19 regarding the two manufacturers in the Maritime Provinces.

The prices established at this time were arrived at by taking discounts off the earlier price lists. Steps were then taken to prepare new schedules of prices which would lessen the possibility of prices varying as between different manufacturers. The following resolutions are recorded in the minutes of the Cana-

dian Corrugated and Fibre Box Manufacturers Association, which continued to operate until its successor was established:—

"TORONTO, November 20, 1931

Resolved:

That the following are named as a Cost Committee:—
Mr. C. J. Munce.
" F. C. Hayes.
" L. F. Winchell.
" A. T. Whealy.
" H. Martin.
" E. A. Woodward.

This Committee to meet in Toronto on Monday and Tuesday, November 30 and December 1 and a general meeting of all manufacturers to be held in Toronto on Wednesday, December 2, 1931."

"TORONTO, December 2, 1931.

The Cost Committee appointed at the last meeting reported progress and it was decided that the Cost Committee would meet again on December 15 and 16 to be followed by a general meeting in Toronto on Thursday, December 17 at which time they expect to bring a complete and final report.

. . .

Resolved:
That all contracts or commitments providing for delivery after December 31, 1931, shall be tabled at the next meeting."

"TORONTO, December 17, 1931.

Resolved:
That effective January 1, 1932, the attached price schedule is adopted for the Provinces of Ontario and Quebec to be supplemented by additional price lists to be figured out and mailed within the next few days.

. . .

Resolved:
That orders on the new price schedule may only be taken for delivery up to March 31, 1932." (Exhibit 3, pp. 10, 14, 16)

The position of the Canadian Corrugated and Fibre Box Manufacturers Association during the period when the agreements under Container Materials, Limited, were being secured is indicated by the evidence of H. J. Badden, president and secretary-treasurer of Container Materials, Limited:

"Q. There do not seem to have been any meetings of the Company between September 25, 1931, and the 22nd of December, 1931, so that apparently the business had not been definitely organized to be operated by the Company until about the 22nd of December?—A. Or after that.

Q. And so it would be that the association continued to function until at least after this meeting on the 22nd of December?—A. Well, we called it an association but it was all abandoned. We simply used that as a name." (Evidence, p. 62)

In other words, Container Materials, Limited, was functioning in all but name as soon as the manufacturers reached the agreement of September 22, 1931, outlined above. When contracts were formally recorded in 1932 the regulations previously established were continued without modification except in so far as it was thought necessary to make them more rigid.

III. PRESENT COMBINATION OF SHIPPING CONTAINER MANUFACTURERS

Container Materials, Limited, the successor to the Canadian Corrugated and Fibre Box Manufacturers Association, is a Dominion company incorporated under letters patent dated December 31, 1930, with head office in the offices of Hardy and Badden, Toronto. As the Canadian Corrugated and Fibre Box Manufacturers Association was functioning at the time the letters patent were issued, it is clear that the decision to establish a more rigid type of organization was taken before the period of open competition, described in the preceding section, had been entered. The adoption of the incorporated company instead of an unincorporated association was intended to give "a more permanent basis of operation" according to the testimony of H. J. Badden (Evidence, p. 131). Instead of one joint undertaking on the part of all the manufacturers to maintain prices and other conditions of sale, a system was adopted of contracts between the incorporated association and each manufacturer separately. Each manufacturer became a shareholder of Container Materials, Limited, and entered into agreement whereby the manufacturer placed his entire output of corrugated and solid fibreboard boxes and related products under the control of Container Materials, Limited, with respect to prices, conditions of sale and, to some extent, standards of manufacturing. "The combination," as used throughout this report with reference to the present combination of manufacturers of corrugated and fibre boxes, refers to the incorporated association, Container Materials, Limited.

At a meeting of the directors of Container Materials, Limited, on December 22, 1931, the officers of the company were authorized to issue shares to the various manufacturers. The minutes of this meeting record the following:—

"The proper officers of the Company were thereupon authorized to issue certificates by way of surrender and transfer on instructions of shareholders surrendering certificates, or on a subscription as follows:—

H. J. Badden	1 share
A. J. Hardy	1 share
Concord Shipping Cartons Ltd	476 shares
J. W. Leeson	1 share
Martin-Hewitt Containers Ltd	190 shares
Herbert Martin	1 share
Kitchener Paper Box Co	141 shares
A. W. Augustine	1 share
Canadian Wirebound Boxes Ltd	784 shares
A. M. Dunn	1 share
Firstbrook Boxes Limited	289 shares
George W. Brown	1 share
Corrugating and Container Co. Ltd	109 shares
E. E. Marriott	1 share
Canadian Boxes Limited	374 shares
V. J. Walsh	1 share
Hinde and Dauch Paper Co. of Canada Ltd	2,766 shares
L. F. Winchell	1 share
Shipping Containers Ltd	867 shares
F. C. Hayes	1 share
The Corrugated Paper Box Co. Ltd	1,127 shares
A. T. Whealy	1 share
Hygrade Corrugated Products Ltd	867 shares
C. J. Munce	1 share
Fibre Boxes Ltd	765 shares
W. S. Morden	1 share

London Shipping Containers Ltd	302 shares
R. L. Stephenson	1 share
Canadian Containers Ltd	163 shares
Gordon Borge	1 share
Standard Paper Box	398 shares
Moisan	1 share
Martin Paper Products Ltd	366 shares
J. Martin	1 share"

(Exhibit 4, p. 59)

The persons in the above list to whom single shares were issued were elected or confirmed as directors of the company at a meeting of shareholders on January 8, 1932. Each company was thus represented by one member on the board of directors. The officers of the company were as follows:—

President	H. J. Badden
Vice-President	A. J. Hardy
Secretary-Treasurer	H. J. Badden

The allocation of shares among the several companies was made on the basis of the percentage in the pool or quota which was allotted to each shareholder company.

Completion of the agreements with the various manufacturers was reported at a meeting of directors on February 11, 1932:—

> "The Secretary then produced to the meeting various agreements dated Sept. 1st, 1931, between the Company and various other companies as prepared by the Company's solicitor and executed by the party thereto other than the Company.
>
> On motion, duly seconded and unanimously carried, it was resolved that the Company do enter into the aforesaid agreements, that the proper officers of the Company be authorized to execute same forthwith on behalf of the Company and to affix thereto the Corporate Seal of the Company." (Exhibit 4, p. 72)

The Agreements referred to in this minute were those entered into with the sixteen manufacturing companies listed in the preceding paragraph.

The nature of these agreements entered into by the sixteen box manufacturers through the medium of Container Materials, Limited, in September, 1931, may now be considered. The basic undertakings consist of two forms of contract which will be referred to as the "purchase agreement" and the "agent agreement." These forms of contract, made by each manufacturer with the incorporated association therein described as "the Company," are shown in Annexes I and II of this report.

The period of the purchase agreement is indicated as follows:—

> "1. This Agreement shall come into force as of the 1st day of September, 1931, and shall continue in force until the 31st day of December, 1934, and unless terminated by written notice of intention to terminate to be given by either of the parties to the other party in writing deposited in His Majesty's Post Office addressed to the other party, registered post prepaid, at least six months prior to the 31st of December, 1934, shall continue in force and effect until the 31st day of December, 1937." (Exhibit 6)

Eight of the seventeen paragraphs in the purchase agreement provide for the system of quotas and pool payments. Examination of these sections is made in the section of this report which deals with the quota system.

Control over the sales of each member company is provided for in the purchase agreement as follows:—

> "5. The Manufacturer agrees that during the currency of this Agreement it will not manufacture for or sell to any person, firm or corporation other than the Company, except as agent for the Company any corrugated and/or solid fibre board products for use or resale within the Dominion of Canada." (Exhibit 6)

An audit or examination of the records of each manufacturer is provided for in the following undertaking, in order that the management may determine if any breaches of the agreement have taken place:—

> "13. The Manufacturer agrees to give the officers of the Company or any agent or servant thereof free access at any time to their plant, books and records of every

kind, including stock sheets and inventories for the purpose of enabling the Company to satisfy itself that the conditions of this Agreement are being fulfilled by the Manufacturer." (Exhibit 6)

The agreement then provides for the placing of deposits by each manufacturer with Container Materials, Limited, to guarantee observance of the agreement and to provide a source from which penalties may be paid in the event of the manufacturer having been found to have broken the agreement in any way. Provisions for the deposit and for the method of determining penalties are as follows:—

"14. The Manufacturer agrees forthwith to deposit with the Company the sum of . . . . (which sum will be increased from time to time by reason of the Company holding moneys to the credit of the Manufacturer as provided in paragraph 4 of a certain agreement of even date herewith between the parties hereto) to guarantee the observance by the Manufacturer of the terms of this agreement. Should the Company claim that there has been a breach by the Manufacturer or the Manufacturer claim that there has been a breach by the Company of any of the terms of this agreement or should any other question or dispute arise between the parties with reference to any matter or thing arising out of or in connection with this agreement which shall not have been settled by the parties between themselves within ten days from the time when such question or dispute arose then except as provided in paragraph 12 hereof such claim or question or dispute shall be referred for determination to Messrs. Hardy and Badden, who acting as experts and not as arbitrators shall determine whether or not a breach has occurred and the damage suffered by either party in consequence thereof and decide any other question or dispute aforesaid and make such direction for the purpose of giving effect to such decision as they may consider appropriate. Such determination or decision shall be made within thirty days and shall be final and binding upon the parties and any such direction so made for the purpose of giving effect to such decision shall be obeyed by the parties. In the event that upon any such reference as aforesaid damages shall be awarded against the Manufacturer the amount thereof may be deducted from the security deposited by the Manufacturer and the Manufacturer shall forthwith deposit with the Company an amount equal to the amount so deducted. In the event of any such damages being awarded as aforesaid against the Company it shall pay the amount thereof to the Manufacturer within ten days from the date of such award being made. Particulars of any and all claims questions or disputes referred for determination as hereinbefore in this paragraph provided and the amount of damages (if any) awarded in respect of any breach of this agreement shall be placed before the Board of Directors of the Company at the first meeting following the date on which any such claim question or dispute was decided and or award made." (Exhibit 6)

The deposits provided for in the agreements with the respective manufacturers varied in amount with the quota allotted to each member, with a minimum deposit of $2,500. The amounts to be deposited by the several manufacturers were as follows:—

Hinde and Dauch Paper Company of Canada, Limited	$10,000
The Corrugated Paper Box Company, Limited	6,000
Hygrade Corrugated Products, Limited	4,500
Shipping Containers, Limited	4,500
Canadian Wirebound Boxes, Limited	4,000
Companies later absorbed by Gair Company, Canada, Limited:	
Fibre Boxes, Limited	4,000
Concord Shipping Cartons, Limited	2,500
Canadian Containers, Limited	2,500
Corrugating and Container Company, Limited	2,500
Firstbrook Boxes, Limited	2,500
London Shipping Containers, Limited	2,500
Canadian Boxes, Limited	2,500
Kitchener Paper Box Company	2,500
Martin-Hewitt Containers, Limited	2,500
Martin Paper Products, Limited	2,500
Standard Paper Box, Limited	2,500

Each manufacturer agreed to increase the amount of his deposit by contributing amounts equal to one per cent of his total sales. Allocations of the

funds so collected are made as follows, according to the explanation given to one manufacturer by Container Materials, Limited, in a letter of February 22, 1938:—

"Under the agreements the 1 per cent assessment on sales accrues to the Company, out of which it pays its operating expenses during each calendar year. At the end of the year, the surplus remaining after paying all operating expenses is allocated to each of the companies contributing during the year on the basis of their total percentage of actual sales in that period, regardless of their shareholding in the Company or their allotted percentage." (Exhibit 239)

The extent to which the original deposits have been increased by assessments during the period of operation is indicated in the following table:—

TABLE 3.—FUNDS OF QUOTA COMPANIES ON DEPOSIT WITH CONTAINER MATERIALS, LIMITED, DECEMBER 31, 1932 AND 1937

—	Dec. 31, 1932 Cash and securities	Dec. 31, 1937	
		Cash and securities	Current year's assessment (1)
	$ cts.	$ cts.	$ cts.
Hinde and Dauch Paper Company of Canada, Limited	10,000 00	59,844 94	9,731 06
The Corrugated Paper Box Company, Limited	9,304 02	28,962 31	3,642 30
Hygrade Corrugated Products, Limited	4,513 33	20,859 56	2,497 87
Shipping Containers, Limited	4,749 85	25,158 00	4,320 73
Canadian Wirebound Boxes, Limited	4,000 00	20,202 75	3,142 04
Gair Company, Canada, Limited		53,779 43	5,924 30
Fibre Boxes, Limited	4,000 00		
Concord Shipping Cartons, Limited	2,502 97		
Canadian Containers, Limited	2,500 00		
Corrugating and Container Company, Limited	37 37		
Firstbrook Boxes, Limited	3,033 16		
London Shipping Containers, Limited	3,000 00		
Canadian Boxes, Limited	3,000 00	11,487 28	1,572 73
Martin-Hewitt Containers, Limited	2,500 00	3,924 49	397 47
Martin Paper Products, Limited	2,500 00	9,510 73	1,110 17
Standard Paper Box, Limited	2,500 00	11,503 44	1,925 65
	58,140 70	254,232 93	34,264 32

(Exhibit 4)

(1) After deducting expenses of Container Materials, Limited, amounting to $32,922.59 and payment to O. and S. Corrugated Paper Company of $32,772.82.

Each member company thus has now a very substantial fund held in trust by Container Materials, Limited, to guarantee the fulfilment of all regulations of the combination. Although the moneys held in trust for each manufacturer are its property, the manufacturer cannot make any use of the funds in his current operations and their accumulation represents an added expense of doing business. Interest which may be earned on the deposits is, however, paid to member companies and in certain cases manufacturers have been permitted to use part of the funds so accumulated for the purchase of securities of their own companies. When a penalty is assessed against a manufacturer he must make an additional payment, as the agreement provides that the amount of the deposit must not be reduced.

The so-called agent agreement, made with the association by each of its members and designed to run concurrently with the purchase agreement, further defines the position of a manufacturer as an agent for Container Materials, Limited. The incorporated association, described in the agreement as "the Company," proceeds as outlined in the following paragraph to appoint the

manufacturer as its agent to sell the products which the manufacturing concern itself has produced:

> "2. The Company hereby appoints the Party of the Second Part its agent for the sale within the Dominion of Canada of corrugated and or solid fibre board products manufactured by the said Party of the Second Part and contracted for by the Company. The Company authorizes the Party of the Second Part to sell all such products manufactured by it for which it shall obtain orders from its customers. Notwithstanding, anything in the said agreement of even date herewith all corrugated and or solid fibre board products manufactured by the Agent and contracted to be purchased by the Company shall be at the sole risk of the Agent as regards loss or damage by fire or other hazard." (Exhibit 7)

Provision for the retention by Container Materials, Limited, of the surplus funds accumulated under the 1 per cent levy on sales by members is made in this agreement as follows:

> "4. The Agent shall be entitled to receive from the Company as a further or overriding commission the same proportion of the net profits of the Company in each calendar year as the amount of corrugated and or solid fibre board products of the Company sold by the Agent is of all such products sold by the Company in such year. This additional commission shall be calculated at the end of each calendar year at which time it shall be placed to the credit of the Agent in the books of the Company but the same shall become due and be payable to the Agent only upon the termination of this agreement. Until paid to the agent such amount or amounts shall be held by the Company and added to the amount referred to in paragraph 14 of a certain agreement made between the Agent and the Company dated September 1st, 1931 and the fund so created shall be subject to all provisions of the said paragraph." (Exhibit 7)

The privilege of terminating the agreements before the date of expiration was waived by all companies under an amending agreement dated April 30, 1934, and the agreements continued in full force for the period which terminated on December 31, 1937. On December 28, 1937, provision was made for the extension of the agreements to April 30, 1938. On April 29 the agreements were further extended to December 31, 1938.

Non-quota Companies

In addition to those manufacturers who became shareholders of Container Materials, Limited, and were allotted quotas, there are two companies in the Maritime Provinces which are in all other respects members of Container Materials, Limited. Their relationship to the combination was indicated as follows by H. J. Badden:

> " . . . there are two concerns in the Maritime Provinces, Wilson Boxes, Limited, and the Maritime Paper Products, who have no quota arrangement. They pay their share of expenses and each has a deposit in our hands." (Evidence, p 48)

These two companies, Wilson Boxes, Limited, of Fairville, N.B., and Maritime Paper Products, Limited, of Halifax, have been associated in this manner with Container Materials, Limited, since its inception. They are subject to all the regulations, excepting only those relating to the quota agreement, and are subject to penalties for any infringement of such regulations. Several other companies which commenced business after 1931 are now associated with Container Materials, Limited, under arrangements which are examined in later sections of the present report.

IV. THE SALES ALLOTMENT OR QUOTA SYSTEM

The agreements reached under the Container Materials combination have as their essential feature the fixing of uniform selling prices. The provisions for the quota system, which is designed to secure the continued adherence of the members to the fixed price policy, constitute the major part of the agreements. The quota system provides for compensations and penalties as manufacturers find their positions weakened or strengthened as to volume of sales under the uniform price system of Container Materials, Limited.

In accepting the quota basis of the agreement the manufacturer agrees to pay a cash penalty if his sales exceed his allotted proportion of the total business of all members and to receive compensation when he fails to secure the allotted proportion of business. Various reasons have been suggested by witnesses for the adoption and maintenance of the quota arrangement. The view expressed in a report by Stevenson and Kellogg, Limited, a firm of experts in trade association matters, although given in another connection, may perhaps be taken as an accurate appraisal. In the opinion of this firm, "it is difficult to maintain adequate price levels in an industry over a long period of time solely on the basis of agreements to maintain them." They add:

> "It has, however, been possible to maintain generally satisfactory price levels by means of a quota plan whereby each manufacturer in the industry agrees to take only his fair share of the total business. The proper distribution of business among the quota companies is brought about sometimes by penalties and bonuses and sometimes by other methods." (Exhibit 266, p. 10)

The "adequate" and "satisfactory" price levels mentioned in this statement are evidently such "fixed" price levels as the quota plan is designed to maintain. The quota system had been introduced into the Canadian shipping container industry in 1929 as part of the joint agreement of manufacturers who formed the Canadian Corrugated and Fibre Box Manufacturers Association. The precise nature of the quota system adopted at that time has not been determined, as sufficient information concerning it has not been available. The sales allotment scheme developed by the Container Materials combination is that set forth in the purchase agreement of September 1, 1931, with modifications adopted as the result of supplementary agreements in 1933, 1934, 1937 and 1938.

Under the agreement of September, 1931, each member company was allotted a certain percentage of the total business of the group. The agreement provided (paragraph 7) that any member failing to make sales equal to his allotted share was to be compensated to the extent of five per cent of the amount of his deficiency. This compensation was to be provided by a levy of five per cent on the excess sales of those manufacturers who secured more than their allotted percentages of the total business. Settlements were to be made monthly so that the members could be kept closely aware of their relative positions in regard to sales. The agreement further provided that for the period commencing January 1, 1932, the penalty or compensatory rate, commonly called the pool tax, would be at the rate of fifteen per cent. The present form of the monthly statement sent to all members by Container Materials, Limited, is illustrated by the report for May, 1938. The rate of pool tax at that time was thirty per cent; it had been increased to twenty-five per cent in 1933 and to thirty per cent in 1934.

TABLE 4. TYPICAL MONTHLY POOL ADJUSTMENT STATEMENT

CONTAINER MATERIALS, LIMITED

Statement for the Month of May, 1938

—	Sales	Tax at 30%	%	Proportions	Adjustment	
					Dr.	Cr.
	$ cts.	$ cts.		$ cts.	$ cts.	$ cts.
Hinde & Dauch Paper Co. of Canada, Ltd...	186,307 37	55,892 21	27·49 of $184,909.78.....	50,831 70	5,060 51	....
Hygrade Corrugated Products, Ltd............	33,213 36	9,964 01	8·11 " "	14,996 18	....	5,032 17
Gair Co. Canada, Ltd............	103,057 00	30,917 10	17·66 " "	32,655 07	....	1,737 97
Corrugated Paper Box Co. Ltd....	64,358 81	19,307 64	10·58 " "	19,563 45	....	255 81
Martin-Hewitt Containers, Ltd............	7,455 27	2,236 58	1·11 " "	2,052 50	184 08	....
Shipping Containers, Ltd........	87,745 08	26,323 52	12·00 " "	22,189 17	4,134 35	....
Standard Paper Box, Ltd.......	36,217 35	10,865 21	5·35 " "	9,892 67	972 54	....
Canadian Wirebound Boxes, Ltd............	53,072 57	15,921 77	9·90 " "	18,306 07	....	2,384 30
Canadian Boxes, Ltd............	27,251 52	8,175 46	4·56 " "	8,431 89	....	256 43
Martin Paper Products, Ltd......	17,687 61	5,306 28	3·24 " "	5,991 08	....	684 80
	616,365 94	184,909 78	100	184,909 78	10,351 48	10,351 48

June 15, 1938

(Exhibit 37A)

The figures appearing under the heading " % " in the above statement are the quotas of the several companies prevailing at the time. In the debit column are shown the penalties imposed on manufacturers who exceeded their quotas in May and in the credit column are shown the payments made to those who did not reach their allotments in this month.

To avoid the possibility that a member might find it more profitable to cease manufacturing and thereby secure compensation for failing to produce his quota, or to operate only part of the time and draw compensation for part of his allotted share, the agreement of 1931 provided as follows:

> "6. The amount of corrugated and or solid fibre board products which the Company hereby contracts to purchase in any period shall be delivered over the entire period proportionately to the Company's market."
>
> "9. The manufacturer covenants and agrees that it will fill with corrugated and/or solid fibre board products manufactured in its own plant all orders given hereunder within a reasonable time after such orders are received and should the manufacturer fail to do so the Company shall to that extent be relieved from its obligation to purchase corrugated and or solid fibre board products from the manufacturer."

(Exhibit 6)

Each member's percentage of the total business was to remain fixed until the end of 1932, when, it was provided, the shares of those members who had exceeded their quotas were to be increased by twenty-five per cent of their excess for the year 1932 and those of the members who had not reached their quotas were to be reduced by twenty-five per cent of their deficiencies. It is to be noted that the adjustments provided were for one quarter of the *excess* or *deficiency* of the quota and not one quarter of the quota itself.

Mr. H. J. Badden, when questioned as to the object of the quota system adopted by Container Materials, Limited, gave the following answer:

> "The object of the quotas is to give everyone a proper share of the business based on what they have been doing." (Evidence, p. 44)

A pointed comment on this answer is found in the following further extract from the evidence of Mr. Badden:—

> "Q. But, assuming that there is a price fully maintained, if they maintained a price but had no quotas, then 'A' and 'B,' engaged in the business, would be in competition, in service, we will say; and if 'B' gave the better service and the more pleasing trading relations and probably a greater credit, he might outdistance 'A' in the volume of production even at the same price?—A. Then 'A' would not be likely to sit in an agreement very long.
>
> Q. Well, it is to forego that that you have the quota?—A. It is partly—it is to stabilize price." (Evidence, p. 45)

By the end of 1932 it was decided to increase the pool tax from 15 per cent to 25 per cent. Canadian Boxes, Limited, of Vancouver, was the only company which did not agree to the higher rate and in spite of later changes this company continued under the fifteen per cent arrangement. The reason for increasing the rate of penalty for exceeding the quota and the rate of compensation for those companies which did not attain their quota is given as follows in the testimony of Mr. Badden:—

> "Q. What is the reason for the change in these percentages?—A. Well, we all thought that fifteen per cent was too low on an adjustment basis.
>
> Q. Why?—A. Well, it didn't provide adequate compensation for the people who lost business." (Evidence, p. 97)

Mr. H. Martin of Martin-Hewitt Containers, Limited, Peterborough, thought the higher rate of pool tax might check the more aggressive companies which were exceeding their quotas. He gave evidence as follows:—

> "Q. In 1933, you might recall there was an amending and extending agreement which increased the tax on excess sales from fifteen to twenty-five per cent. Were you in favour of that change in 1933 or otherwise?—A. To the best of my recollection I think I approved of it.
>
> Q. Now wouldn't the fact that it had increased the tax limit your advance?—A. No, I think it would help it.
>
> Q. You think it would help it?—A. I would think so. I may be wrong, but that would be my view. In other words, to get the cart before the horse, I think if you checked some of the others—
>
> Q. Check some of the others from doing what?—A. From carrying on in a more aggressive way. Others who have more salesmen and went at it in a more aggressive way than we did and, personally, I thought that increasing that would have a tendency to check them and give us a better chance." (Evidence, p. 374)

Mr. Martin, whose company occupied a creditor position until 1937, as did most of the Ontario firms, added that the higher pool tax rates did not achieve the results desired of limiting the selling activities of rival manufacturers:—

> "Q. If that had such a good effect on curbing the aggressiveness of your competitors, would it not be a good thing to increase it to thirty-five or forty per cent?—A. Theoretically, I would think so but, practically, it doesn't work out that way." (Evidence, p. 375)

The increase in the pool tax from 15 per cent to 25 per cent as a result of the amending agreement of January 3, 1933, was not, in the opinion of a majority of the members of Container Materials, Limited, sufficiently large to achieve the results desired. On April 30, 1934, a further agreement was reached whereby the pool tax was raised to 30 per cent. At the same time the rate of adjustment for the pool quotas was also increased from 25 per cent to 30 per cent. The 30 per cent rate for pool tax was maintained until September 30, 1938, when by resolution passed at a meeting of the board of directors of Container Materials, Limited, the rate was changed summarily from 30 per cent to 10 per cent.

The necessity of setting the pool tax sufficiently high to discourage firms from exceeding their quotas is indicated in a reply which F. C. Hayes, vice-president of Shipping Containers, Limited, Montreal, made to a suggestion of John Martin, president of Martin Paper Products, Limited, Winnipeg, that the rate of the pool tax be reduced. In his letter of November 16, 1937, Mr. Hayes stated:—

> "As far as a 5 per cent pool is concerned, we might just as well not have one for as long as the pool is less than the profit, there is no incentive to curtail production and keep within the territorial limits." (Exhibit 238)

Mr. L. F. Winchell, vice-president and general manager of the Hinde and Dauch Paper Company of Canada, Limited, to whom Mr. Martin had made the same suggestion, was even more emphatic than Mr. Hayes in his view as to the purpose of the pool tax. Both Mr. Winchell and Mr. Hayes were of the opinion that a re-allocation of quotas was necessary by the end of 1937. Mr. Winchell's view in this respect was indicated in the following statement in a letter dated November 13, 1937:—

> ". . . . I would disagree with you on the Pool Tax. To my way of thinking, if the association is reformed, and we sincerely hope it will be, we believe that everybody should come in, without exception, and probably the best basis on which to come in is to take as a guide the business that every concern did during 1937 as their quota in making up a 100 per cent basis. I would go so far as to suggest that anybody who runs over this quota should be penalized 100 per cent of the value of the business. That certainly would keep them in their places, and, if it is a fair basis, which it should be, no one will have any kick coming. Probably the best way to make this penalty effective would be to require that that fellow price himself out in the next period on business equivalent in volume to what he took over the quota in the previous period . . . ." (Exhibit 278)

In spite of evidence that the purpose of the pool tax is to induce member firms to restrict their sales, the secretary of Container Materials, Limited, and several other witnesses declared during the inquiry that in their opinion no restriction had resulted from the quota system with its penalties and compensations. The following extract from the evidence of H. J. Badden relates to the effect of the pool tax upon the policy of member companies in regard to their production:—

> "Q. Well, he agrees that he will be subject to a penalty if his sales are in excess of his quota?—A. He agrees to take a less price.
>
> Q. Well isn't that rather discouraging him from developing his output?—A. I don't know, we have to meet export conditions and export markets; you have to take less money in order to get your production up and your costs down, but there isn't any restriction, Mr. Commissioner, at all. There is a set of conditions which are outlined below but there is no attempt at restriction and I think all the records will show that there hasn't been restriction.
>
> Q. Of the individual manufacturer's production?—A. Yes, sir." (Evidence, p. 67)

The possibility of incurring the pool tax is only one of a number of factors to be taken into consideration by member companies in determining their selling policies, and it would be impossible to ascertain exactly how far these policies were influenced by the knowledge that a pool tax would be imposed on all sales in excess of their quotas. Nevertheless the contribution paid by companies producing in excess of their allotted quotas is a definite burden upon them, even though they may consider it to be offset by advantages derived from participating in the combination. The following letter from Shipping Containers, Limited, Montreal, to London Shipping Containers, Limited, dated April 3, 1933, indicates that the pool tax has been one of the determining factors in formulating sales policy:—

> "We have your letter of March 31st and are, of course, very sorry to lose the Carling business, but, we quite appreciate that you could hardly be expected to get along on a 5 per cent commission when H. & D. will pay you 10 per cent.
>
> However, it has been our aim in the last two months to reduce our tonnage in order that we will not be called upon to pay a heavy pool tax and as we have been

allowing you this pool tax and receiving no benefit from same on the six months' adjustment, we feel that when everything is considered, the present situation is quite agreeable to us." (Exhibit 225)

Mr. Badden gave the following testimony in claiming lack of restriction on production under the quota system:—

". . . Just to demonstrate to you, Mr. Commissioner, that there isn't any restriction, you will find in the record there that some people started off with about 8 point something and are now up to twelve per cent, which demonstrates clearly that if you want to increase your business you have the opportunity to do so." (Evidence p. 101)

The record, however, does not give the demonstration suggested in this statement. The quota of only one concern, Shipping Containers, Limited, Montreal, has changed in the manner indicated. But the quota figures do not tell the whole story. The 1931 figures relate only to the sales allotments which were assigned at that time to the quota companies. In certain instances the original allotment did not represent the relative sales position of certain companies, and Shipping Containers, Limited, was one of these. Its sales in 1931 would have entitled it to at least a 10 per cent allotment, but it was assigned only 8·68 per cent. Under the agreement its quota naturally would increase from year to year. Moreover, there are firms associated with Container Materials, Limited, which are members in all respects except that of the quota, and still other firms which are committed to respect all the regulations of the combination regarding prices and terms of sale. When the sales of all these associated firms are considered together with the sales of the quota companies the percentages of the latter are shown in a very different light, as the following tabulation indicates:—

TABLE 5.—REPORTED SALES OF QUOTA COMPANIES SHOWN AS PERCENTAGES OF SALES OF ALL COMPANIES ASSOCIATED WITH CONTAINER MATERIALS, LIMITED

—	1929–30 (13 mos.)	1931 (4 mos.)	1937
	%	%	%
Hinde and Dauch Paper Co. of Canada, Ltd., Toronto and Montreal	32·15	25·67	23·79
Gair Co. of Canada, Ltd.(1), Toronto	20·69	18·91	14·49
Shipping Containers, Ltd., Montreal	10·13	10·58	10·56
The Corrugated Paper Box Co., Ltd., Toronto	13·22	11·03	8·90
Canadian Wirebound Boxes, Ltd., Toronto and Montreal	3·84	8·65	7·68
Hygrade Corrugated Products, Ltd., London	7·03	10·48	6·10
Standard Paper Box, Ltd., Montreal	4·11	4·41	4·71
Canadian Boxes, Ltd., Vancouver	4·10	3·73	3·84
Martin Paper Products, Ltd.(2), Winnipeg	3·55	4·52	2·72
Martin-Hewitt Containers, Ltd.(3), Peterborough	....	·19	·97
Kitchener Paper Box Co., Kitchener	1·18	1·83	....
Other associated companies(4)	(5)	(6)	16·24
	100·00	100·00	100·00

(1) Figures for Gair Company for 1929–30 and 1931 are combined percentages of predecessor companies.
(2) Not reported as a quota member in 1929–1930.
(3) Figures for Martin-Hewitt Containers, Limited, represent only that part of its sales which, under a special arrangement, are reported to Container Materials, Limited.
(4) See Table 1 for the names of the six associated companies in 1937.
(5) Figures are not available for the one associated company, Building Products, Limited.
(6) Figures are not available for the three associated companies, Building Products, Limited, Wilson Box and Lumber Company, Limited, and Maritime Paper Products, Limited.

This table shows that all the quota companies operating in Ontario with the exception of Martin-Hewitt Containers, Limited, had in 1937 smaller proportions of the total sales than they had in 1931. This change in position is accounted for in part by the entrance of non-quota companies into the Ontario market and the distribution of business among a larger number of firms. The two Montreal concerns (apart from branch plants of Ontario members) have maintained

practically the same relative position in the industry throughout the period, as they have not been subjected to the competition of any new plants locating in their territory. These factors account in large measure for the changing quota positions. The quotas of the Montreal concerns have increased, in spite of the restrictions of the combination, largely because of the growth of total available business in their territory.

The changes in quotas that have been made under the agreement between 1931 and 1938 may be tabulated as follows:—

TABLE 6.—SALES ALLOTMENTS OF QUOTA MEMBERS OF CONTAINER MATERIALS, LIMITED, 1931, 1937 AND 1938

—	1931	1937	1938 as per agreement(1)	Allotted in 1938	
				Jan.	May
	%	%	%	%	%
Hinde and Dauch Paper Co. of Canada, Ltd	27·67	27·34	27·66	27·50	27·49
Gair Co. of Canada, Ltd.(2)	21·10	19·77	19·03	18·02	17·66
Shipping Containers, Ltd	8·68	10·95	11·46	11·50	12·00
The Corrugated Paper Box Co. Ltd	11·28	10·61	10·61	10·59	10·58
Canadian Wirebound Boxes, Ltd	7·85	8·66	8·81	10·00	9·90
Hygrade Corrugated Products, Ltd	8·68	8·67	8·26	8·22	8·11
Standard Paper Box, Ltd	3·99	4·84	5·07	5·08	5·35
Canadian Boxes, Ltd	3·75	4·45	4·49	4·49	4·56
Martin Paper Products, Ltd	3·67	3·60	3·49	3·48	3·24
Martin-Hewitt Containers, Ltd	1·91	1·11	1·12	1·12	1·11
Kitchener Paper Box Company	1·42	....	....	....	....
	100·00	100·00	100·00	100·00	100·00

(1) Quotas allotted in 1938 appear to have been the result of bargaining between members rather than the result of the method of adjustment provided in the basic agreement.
(2) Figures for Gair company for 1931 are combined percentages of predecessor companies.

It may be noted that the Montreal firm already referred to, whose quota increased from 8·68 per cent in 1931 to 12·00 per cent in May, 1938, secured the latter figure only through a modification of the agreement; its quota for 1938 would have been 11·46 per cent under the regular method of adjustment. This is the only firm whose quota increased by more than two per cent between 1931 and 1938.

The relative changes in position among the quota members of Container Materials, Limited, in regard to sales is indicated by the following comparison of the relative volume of sales for the calendar years 1932 and 1937:—

TABLE 7.—SALES OF INDIVIDUAL QUOTA MEMBERS OF CONTAINER MATERIALS, LIMITED, SHOWN AS PERCENTAGES OF TOTAL SALES OF ALL QUOTA MEMBERS

—	1932	1937	Difference
	%	%	
Hinde and Dauch Paper Co. of Canada, Ltd	27·07	28·40	+1·33
Hygrade Corrugated Products, Ltd	9·12	7·29	−1·83
Gair Co. of Canada, Ltd.(1)	20·29	17·29	−3·00
The Corrugated Paper Box Co. Ltd	11·32	10·63	− ·69
Martin-Hewitt Containers, Ltd	·53	1·16	+ ·63
Canadian Wirebound Boxes, Ltd	8·48	9·17	+ ·69
Shipping Containers, Ltd	10·56	12·61	+2·05
Standard Paper Box, Ltd	4·05	5·62	+1·57
Martin Paper Products, Ltd	4·03	3·24	− ·79
Canadian Boxes, Ltd	4·55	4·59	+ ·04
	100·00	100·00	

(1) Figures for Gair company for 1932 are combined percentages of predecessor companies.

The pool tax is a definite added cost of doing business for those quota members of Container Materials, Limited, whose proportions of the total business exceed the percentages allotted to them in any period. On the other hand, payments from the pool to under-quota members constitute a definite subsidy. Up to the time that the relative sales positions of Quebec and Ontario members became altered by the increasing sales of non-quota manufacturers in Ontario, it appears that the payments of pool tax were made largely by the lower cost firms and that the subsidies from the pool were made to the firms with higher costs. The results of a survey made for the year 1935 by Jenkins and Hardy, auditors for Container Materials, Limited, may be taken as an indication, though not as an accurate measure, of the relation between pool payments and efficiency. The usefulness of this survey is limited by the incompleteness of the records in certain plants and the difficulties of allocating expenses of those firms in which shipping containers form only a part of total output. As payments to or from the pool were treated by Jenkins and Hardy as an additional item of expense or as a reduction from cost, it is necessary to make adjustments for penalties or compensations in determining cost. This has been done on the basis of the annual pool summary made by Container Materials, Limited, for 1935:

TABLE 8.—OPERATING EXPENSES OF EACH QUOTA MEMBER OF CONTAINER MATERIALS, LIMITED, SHOWN AS PERCENTAGE OF HIS SALES, 1935

Firm (1)	Total cost (including pool tax) shown as percentage of sales	Adjustment for Pool Tax (2)		Total cost (omitting pool tax) shown as percentage of sales
		Receipts from Pool	Payments to Pool	
	%	%	%	%
A	99·60	4·55	....	104·15
B	96·87	4·20	....	101·07
C	92·97	3·30	....	96·27
D	84·52	11·75	....	96·27
E	92·08	2·33	....	94·41
F	94·12	·53	....	94·65
G	99·14	....	6·31	92·83
H	93·23	....	·95	92·28
I	91·01	....	3·21	87·80
J	95·52	....	9·19	86·33
K	85·79	·09	....	85·88
L	86·90	....	2·24	84·66

(1) One member firm the greater part of whose production is not under quota has been omitted from this tabulation.

(2) The pool tax includes payments made for the purchase of machinery from Building Products, Limited (see Section VI). If these were eliminated the receipts would be somewhat larger and the payments smaller.

It will be seen from the above tabulation that all the high cost firms received compensation from the pool and that only one low cost firm received any compensation, and this to a relatively small proportion.

Since 1935 the situation respecting pool credits and debits has been affected by the growing proportion of the business in Ontario which has been secured by non-quota companies. The absorption of six firms by Gair Company, Canada, Limited, makes it impossible to make the same comparison for later years as for 1935.

In spite of the fact that quotas allocated to members of Container Materials, Limited, have, for the majority of firms, changed only slightly during the period 1931 to 1937, the payments made to members who produced less than their allotted quotas amounted to approximately half a million dollars in the period.

The compensations and penalties of each company under the quota system are shown in the following table, which is based on the pool statements of Container Materials, Limited, from 1931 to 1937:

TABLE 9.—AMOUNTS RECEIVED AND PAID UNDER QUOTA SYSTEM, CONTAINER MATERIALS, LIMITED, 1931-1937

AMOUNTS RECEIVED

Company	1931 (4 mos.)	1932	1933	1934	1935	1936	1937	Gross amount received 1931-1937	Net amount received 1931-1937
	$	$	$	$	$	$	$	$	$
Hinde and Dauch Paper Company of Canada, Ltd,	1,806	7,205	5,394	14,032	10,130	....	....	38,567	....
The Corrugated Paper Box Co., Ltd.	225	1,137	6,318	17,704	17,012	8,182	....	50,578	47,342
Gair Company, Canada, Ltd.	....	....	....	....	....	32,317	62,469	94,786	94,786
Concord Shipping Cartons, Ltd.	1,228	13,132	12,992	23,910	22,854	....	....	74,116	74,116
Canadian Containers, Ltd.	294	2,284	3,493	2,473	3,143	....	....	11,687	11,687
Corrugating and Container Co. Ltd.	141	....	430	727	2,895	....	....	4,193	4,118
Fibre Boxes, Ltd.	1,708	7,796	....	33,077	19,962	....	....	62,543	57,743
Firstbrook Boxes, Ltd.	....	....	....	....	....	....	....	....	....
London Shipping Containers, Ltd.	....	....	....	....	222	....	....	222	....
Martin-Hewitt Containers, Ltd.	1,554	10,466	10,661	7,419	6,062	4,488	....	40,650	38,876
Martin Paper Products, Ltd.	....	....	....	....	9,424	9,682	8,835	27,941	19,565
Hygrade Corrugated Products, Ltd.	....	....	9,545	2,864	....	11,844	35,517	59,770	39,953
Canadian Boxes, Ltd.	14	....	....	....	....	....	....	14	....
Standard Paper Box, Ltd.	....	45	....	....	....	....	....	45	....
Kitchener Paper Box Company	....	1,058(1)	....	....	....	....	....	1,058	693
Canadian Wirebound Boxes, Ltd.	....	....	....	....	....	....	....	....	....
Shipping Containers, Ltd.	....	....	....	....	....	....	....	....	....
Deduction *re* payments to Building Products Limited and Quebec Paper Box Company	....	....	....	....	26,400	26,400	26,039	78,839	....
	6,970	43,123	48,833	102,206	118,104	92,913	132,860	545,009	....

AMOUNTS PAID

Company	1931 (4 mos.)	1932	1933	1934	1935	1936	1937	Gross amount paid 1931-1937	Net amount paid 1931-1937
Hinde and Dauch Paper Company of Canada, Ltd.	....	....	....	....	....	15,294	36,071	51,365	12,798
The Corrugated Paper Box Co., Ltd.	....	....	....	....	....	....	3,236	3,236	....
Gair Company, Canada, Ltd.	....	....	....	....	....	....	....	....	....
Concord Shipping Cartons, Ltd.	....	....	....	....	....	....	....	....	....
Canadian Containers, Ltd.	....	....	....	....	....	....	....	....	....
Corrugating and Container Co., Ltd.	....	75	....	....	....	....	....	75	....
Fibre Boxes, Ltd.	....	....	4,800	....	....	....	....	4,800	....
Firstbrook Boxes, Ltd.	1,233	10,880	3,196	15,734	34,336	....	....	65,379	65,379
London Shipping Containers, Ltd.	163	3,939	8,118	5,165	....	....	....	17,385	17,163
Martin-Hewitt Containers, Ltd.	....	....	....	....	....	....	1,774	1,774	....
Martin Paper Products, Ltd.	760	2,372	3,820	1,424	....	....	....	8,376	....
Hygrade Corrugated Products, Ltd.	1,633	3,190	....	....	14,994	....	....	19,817	....
Canadian Boxes, Ltd.(2)	....	5,393	6,797	1,673	6,475	3,182	3,059	26,579	26,565
Standard Paper Box, Ltd.	376	....	2,068	20,669	25,170	9,427	22,592	80,302	80,257
Kitchener Paper Box Company	365	....	....	....	....	....	....	365	....
Canadian Wirebound Boxes, Ltd.	720	3,908	5,577	14,665	5,914	16,261	16,051	63,096	63,096
Shipping Containers, Ltd.	1,720	13,366	9,879	40,499	25,862	46,728	48,177	186,231	186,231
Absorbed by Container Materials(2)	....	....	4,578	2,377	5,353	2,021	1,900	16,229	....
	6,970	43,123	48,833	102,206	118,104	92,913	132,860	545,009	

(1) Part year.

(2) Canadian Boxes Ltd., Vancouver, continued on basis of 15 p.c. pool tax and Container Materials Ltd., absorbed difference between 15 p.c. and prevailing rate.

The two Montreal companies have paid the largest penalties in the period 1931 to 1937. Standard Paper Box, Limited, has paid pool tax in all but one year, a total of $80,302.10. The pool tax payments of Shipping Containers, Limited, which has paid the tax in every year, totalled $186,132.43 by the end

of 1937. This company regards the tax as a means of insuring itself against more active competition, as indicated in the following evidence of F. C. Hayes:

> "Q. But for these arrangements, I suppose, the Ontario companies would make inroads into the Montreal market that they don't make now?—A. I wish I knew—it would help me a lot.
>
> Q. Then you wouldn't have to make such an outlay as this?—A. Exactly."
>
> (Evidence, p. 2132)

The company receiving the largest compensation from the pool has been Gair Company, Canada, Limited, which was paid $32,316.79 in 1936 and $62,468.66 in 1937. Four of the predecessor companies in the Gair group had net credit balances on pool tax prior to their absorption by the Gair company. Concord Shipping Cartons, Limited, had received $74,116.58 by the end of 1935 and Fibre Boxes, Limited, $57,742.66. London Shipping Containers, Limited, and Firstbrook Boxes, Limited, two other members of the Gair group, had debit positions in this period. The Corrugated Paper Box Company, Limited, had had a net credit position in relation to the pool in each year except 1937. On balance, payments to this firm amounted to $47,343.62 for the 1931-1937 period.

In summary it is manifest that the continuance of the sales allotment or quota system by the combination of manufacturers of shipping containers throughout Canada has been possible because the prices which have been agreed upon have been sufficient not only to permit the relatively efficient firms in the industry to make large returns upon their investment, but to provide for the payment of the substantial charges for pool tax, purchases of machinery, and other restrictions on competition which have been effected through the price-fixing controls operated under the name of Container Materials, Limited. The quota system is essentially based on the proposition that once a firm establishes itself in an industry it is entitled to a share of the total business. In this industry the method of sales allotments has become an integral part of the price-fixing arrangements. By protecting the marketing position of each member it has served to bolster a system of rigid control of prices and to provide an incentive to manufacturers to continue to submit to the restrictions imposed by the combination.

V. CONTROL OVER PRICES AND METHODS OF SELLING

1. Methods of Control

The primary purpose of the box manufacturers' combination, Container Materials, Limited, is to secure " a stabilized price situation," according to the evidence of H. J. Badden. The attainment of this objective has involved the development of a comprehensive and rigid system of regulations applying to member and associated companies, supplemented by measures providing for constant and detailed audit and supervision.

Corrugated shipping containers are customarily made to order, and although common sizes are in use, the customer's requirement of individual printing generally precludes manufacturing for stock. Standardization of prices is made possible, therefore, only by the establishment of uniform methods of preparing quotations and constant check of each manufacturer's records to disclose any breaches of the price agreement.

The basic agreement among the members of Container Materials, Limited, with respect to price is contained in the following paragraph of the agent agreement:

> " 3. The Agent shall sell corrugated and or solid fibre board products manufactured by it and contracted for by the Company at the Company's resale price thereof and shall retain for its own use as commission on such sales 10 per cent of such resale price." (Exhibit 7)

The 10 per cent commission mentioned is subject to the provisions of paragraph 4 of the purchase agreement, to the effect that the manufacturer shall receive from Container Materials, Limited, for his product the prevailing market prices less 11 per cent. The net result is that the manufacturer contributes one per cent of the value of his sales to Container Materials, Limited, which payments are held in trust in the manner which has already been described.

The officers of Container Materials, Limited, are authorized to examine the records of any member, as stipulated in the purchase agreement:

> " 13. The manufacturer agrees to give the officers of the Company or any agent or servant thereof free access at any time to their plant, books and records of every kind, including stock sheets and inventories for the purpose of enabling the Company to satisfy itself that the conditions of this agreement are being fulfilled by the manufacturer." (Exhibit 6)

In referring to this paragraph Mr. Badden said:

> " A. We act continuously on that by a verification of the sales.
>
> Q. And for any other reason?—A. The investigation of any complaints.
>
> Q. That is, complaints of selling at prices lower than fixed by the Company?—A. That's right." (Evidence, pp. 117-118)

The number of fines or penalties imposed was greater in the early years of Container Materials, Limited, than in the recent period, the record being

1932	29 penalties	1935	14 penalties
1933	14 "	1936	3 "
1934	8 "	1937	3 "

The total of the penalties for these years amounts to $2,570. A few letters will illustrate not only the way in which penalties are imposed but the close check which is made with respect to individual transactions of even small account.

"TORONTO 2, Ont.
June 3, 1935.

HYGRADE CORRUGATED PRODUCTS LTD.,
LONDON, ONTARIO.

DEAR SIRS,—

We have just received report from our representative covering his recent examination of your records.

We find that double wall containers have been sold since May last year up to April this year to the Appleford Paper Products, Hamilton, at a figure of $155.80 instead of $160.80 per thousand.

We also find that sales were made to Brantford Stationers, Limited, for a No. 235 container at a figure of $174.25 which should be $176.10.

We are therefore imposing a penalty of $50 and shall be glad if you will please send us cheque for $50 to cover these infractions.

Yours truly,
(Sgd.) H. J. BADDEN/R
Secretary-Treasurer,
Container Materials, Limited."

"LONDON, ONTARIO, June 4, 1935.

Mr. H. S. LITTELJOHN,
% Waldorf Hotel,
Hamilton, Ontario.

Dear Mr. LITTELJOHN,—

Enclosed is a letter received this morning from Container Materials, Limited. In explanation of this we would say that on May 18th, 1934 (at a time when everybody was head over heels in work) we made a mistake in quoting Appleford Paper Products on their C-21 double wall container by adding only $5.00 for the constant instead of $10.00. We have since supplied a total of six 500 lots at this figure thereby losing $30.00 on a type of box in which there is very little money at any time. You will recall, of course, that this firm is giving us only their double wall boxes to make and are purchasing their single wall boxes from Crest Cartons.

In connection with Brantford Stationers No. 235 containers, we supplied 260 in May and 150 in October of last year. The error occurred when we were obtaining the book reading. The length and width added together gives 43⅛ but was read off our table as 43 instead of 43½. Both of these prices were figured out in May of last year during the price increase rush and we don't think there is a vestige of evidence that there was any intention on our part to cheat. We believe you will agree with us that in both instances mentioned above it was a purely mechanical error which was made. We feel that a penalty of $50.00 is altogether out of proportion to the offence and think that if any fine at all should be levied it should be a merely nominal one.

Yours very truly,
HYGRADE CORRUGATED PRODUCTS LIMITED,
(Sgd.) H. C. WONNACOTT,
Sec.-Treas."

"TORONTO 2, ONT., June 10, 1935.

Hygrade Corrugated Products Limited,
London, Ontario.

DEAR SIRS,—

We were handed by Mr. Munce, copy of letter written to Mr. Litteljohn under date of June 4th, together with our original letter to you of June 3rd, both of which are enclosed herewith.

We might say that we carefully considered all the circumstances before assessing the fine, and think you have overlooked the fact that fines are based more or less on the amount of business involved. In some cases fines have been imposed where only quotations were given, and no business resulted, and according to our figures there is approximately $500.00 worth of business involved in these transactions, therefore, we think a fine of $50.00 is a reasonable sum. In fact if it had not been for all the circumstances in connection with it, the amount would be considerably more.

We shall, therefore, be glad if you will please send us a cheque to cover and oblige.

Yours truly,
(Sgd.) H. J. BADDEN/R
Secretary-Treasurer, Container Materials Limited."

(Exhibit 77)

Penalties are imposed, as seen from the above correspondence, on the basis of quotations made, regardless of whether the manufacturers get the business or not.

In more than one instance a penalty was imposed and paid even though the manufacturer had not signed an agreement with Container Materials, Limited. The following letter from the secretary of the combination to Superior Box Company, Limited, of Kitchener, whose relations with the organization will be reviewed later, provides an example:—

"TORONTO 2, ONT.,
November 21, 1935.

SUPERIOR BOX COMPANY,
Waterloo, Ontario.

Re: Biltmore Hats Limited, Guelph

DEAR SIRS,—

We received complaints that the above customer claimed to be able to purchase from you certain sizes of their requirement at less than the tariff prices.

We find upon making enquiries that this has apparently been the case in respect to three sizes. The box 24 x 13¾ x 44 has been sold at $245.85 per thousand instead of $247.20, and a box 24 x 13¾ x 39 at a figure of $224.95 instead of $226.30, and the size 13¾ x 12 x 39 at $154.30 instead of $155.60.

We, therefore, call upon you to show cause within fifteen days from this date, why a penalty should not be imposed for these infractions.

Yours truly,
(Sgd.) H. J. BADDEN,
Secretary-Treasurer, Container Materials, Limited. R."

(Exhibit 78)

The following letter illustrates the manner in which complaints may arise and are acted upon:—

"TORONTO 2, ONT.,
March 25, 1935.

SHIPPING CONTAINERS, LIMITED,
155 Beaubien St. W.,
Montreal, P.Q.

DEAR SIRS,—

We have been advised by our Montreal Office, that at your request they checked up a sale by Hinde & Dauch Paper Company of Canada Limited to D. Verdun Limitee, Quebec, which should have been charged at $79.15 per M instead of as invoiced at $76.80.

We have investigated this and the explanation given to us is that previous to the first of January of this year, this size was sold to them in non-test stock, or in other words that .58 instead of .60 was used in filling this order of test stock.

We have imposed a penalty of $25.00 upon Hinde & Dauch Paper Company of Canada Limited for this infraction.

Yours truly,
(Sgd.) H. J. BADDEN/R
Secretary-Treasurer, Container Materials Limited."

(Exhibit 219)

In spite of the check which is made by the travelling auditors of Container Materials, Limited, and the levying of penalties when evidence is found of goods being invoiced or quotations made at prices lower than those established, further checks have been added to block any loophole for unauthorized pricing which might exist. Sworn statements are required from a representative of each company each month that prices have been maintained. A resolution to this effect was passed by the board of directors of Container Materials, Limited, on March 15, 1933:—

"That a responsible representative from each of the Company's agents shall make a personal declaration monthly to the effect that the sales returns as made by his Company to Container Materials, Limited, are true and correct and include all sales of goods covered by the agreement with Container Materials, Limited, whether made directly or indirectly. Secretary was instructed to prepare and have a printed declaration form, and these shall be sent monthly to each Company's representative to be personally completed." (Exhibit 4, p. 85)

It would appear that this declaration was also designed to ensure that each manufacturer reported the full value of his sales so that there would be no evasion of the pool tax or no undue payment from the pool by reason of an understatement of sales. The following is the declaration which must be made in reporting sales each month in accordance with the foregoing resolution:—

"I .... do solemnly declare:

That the above is a true and correct statement of the sales of goods covered by the above named Agreement, made by ....during the month of ....

And that such sales were made at the prices and terms strictly in accordance with the terms of the agreement above mentioned, and I have personally verified the same.

And I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of 'The Canada Evidence Act.'" (Exhibit 145)

Further assurance that prices were being upheld was required a year later by an additional provision that every salesman as well as every sales manager must make a sworn declaration each month that no price concessions had been given. The resolution to this effect was passed by the board of directors on February 28, 1934:—

"That effective March 1, 1934, all sales representatives of the company's agents, including those on salary or commission, and all sales managers of the company's agents shall take a monthly affidavit that they have maintained the company's resale prices, and not directly or indirectly made any allowance, rebate, discount or other inducement to any customer." (Exhibit 4, p. 94)

The sworn declaration for this purpose is to the following effect:—

"I,................................, of the Town or City of......................in the County of..........................and Province of.............................do solemnly declare:

1. THAT I am salesman for...and as such have knowledge of the facts herein deposed to.

2. THAT during the month of................., all quotations given or orders accepted by me have been at prices, terms and conditions as authorized by Container Materials, Limited.

3. THAT I have not either directly or indirectly made any allowance, rebate or special discount in connection with any quotations, sales or orders, nor have I either directly or indirectly resorted or had recourse to any scheme or subterfuge whatever as an inducement or aid, or which may operate as an inducement or aid, in making present or future sales of goods.

And I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of 'The Canada Evidence Act.'" (Exhibit 145)

The head of each member company must also file his monthly affidavit, as provided for in the following resolution passed at the meeting of February 28, 1934:—

"That effective March 1, 1934, all Directors of the Company shall take a monthly affidavit that their company as agent of Container Materials, Limited, has carried out all the terms and conditions provided for in the agreement between their company and Container Materials, Limited." (Exhibit 4, p. 94)

The substance of this affidavit is as follows:—

"I,..........................., of the City of ...., in the County of...................., and Province of...................do solemnly declare:—

1. THAT I am General Manager of.. and also that I am a Director of Container Materials, Limited.

2. THAT the sales made by..................................either directly or indirectly during the month of........................., of all goods covered by the agreements made between Container Materials, Limited and........................ dated September 1, 1931, and any amendments thereof, were $............and included all such goods manufactured and shipped by..................................

3. THAT I have not, nor to the best of my knowledge and belief has any other person or representative on behalf of...................either directly or indirectly

resorted or had recourse to any scheme or subterfuge whatever as an inducement or aid, or which may operate as an inducement or aid, in making present or future sales of goods.

4. THAT..................to the best of my knowledge and belief has fully maintained all the terms and conditions provided for in agreement with Container Materials Limited dated September 1, 1931, and any amendments thereof.

And I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of 'The Canada Evidence Act.'" (Exhibit 145)

It might be thought that this declaration, purporting to cover "all the terms and conditions," would be sufficient for its purpose. In spite of its comprehensive character it was decided on February 25, 1937, to supplement it by a further affidavit covering one particular feature—the purchase and sale of dies. Shipping containers generally carry some printed matter and it is necessary to use dies for printing in the course of manufacture. These dies are necessarily made for the individual customer and it is the custom of the industry to charge the purchaser of boxes with the cost of the dies which are required for his orders. If a customer maintains unaltered the printing for his purchases, the same set of dies can be used on successive orders, although in the course of time the dies have to be replaced. The cost of replacing dies, however, has customarily been borne by the manufacturer and the customer billed only for dies of any new type. In order that the manufacturer may recoup himself for the cost of replacing dies, a schedule of prices for new dies has been established by the combination, prices which are generally in excess of the actual cost of dies to the box manufacturer.

In a competitive market the individual manufacturer would be free to follow a policy best suited to his particular interests in charging his customers for the necessary printing. Under the Container Materials agreements, however, the slightest possibility of price variation between manufacturers is guarded against. The adoption of the following resolution requiring full details of the purchase and sales of dies is evidence of the efforts made in this direction:—

"That commencing March 1, 1937, the agents for the companies shall make a monthly affidavit setting out in detail complete information covering the purchase and sale of dies." (Exhibit 4, p. 148)

The form of declaration prepared by the secretary pursuant to this resolution is now as follows:—

"I,................................, do solemnly declare:—

That the above is a true and correct statement covering all purchases of dies by ....during the month of.........................., and where indicated have been charged to the customers noted, and that I have personally verified the same.

And I make this solemn declaration, conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of 'The Canada Evidence Act.'" (Exhibit 146)

Before the system of affidavits which has just been discussed had been fully developed, steps were taken by the combination to limit any freedom of action with respect to prices which might remain with commission agents representing the manufacturers. The first step in this direction was a resolution passed at a meeting of Agents of Container Materials, Limited, on March 8, 1932:—

"That all the Company's registered agents shall assume responsibility for the maintenance of the Company's resale prices on behalf of their own agents. Each agent to file with the Company a list of their Agents giving the names and addresses." (Exhibit 3, p. 74)

Control was carried a step further on June 2, 1932, when the following resolution was adopted:—

"That on and after July 1, 1932, no commission agent shall be appointed or represent any of the Company's agents in territories regularly covered by the Company's

own Agents salesman, and no commission agent shall be connected with any other line, where he directly controls the sale price of that line, any exception to above must be with the approval of the Company.

This resolution to also confirm the regulation that jobbers shall not be allowed any commission as agents for the Company's agents." (Exhibit 3, p. 94)

The regulation regarding jobbers prevents wholesalers from handling corrugated products except in circumstances where prices higher than those set by Container Materials, Limited, are charged, as no discount is given to jobbers under the resolution. It is not likely that under existing production methods jobbers would deal in these products on any large scale, as they are usually made to order and not for stock.

Regulation of the activities of commission agents by Container Materials, Limited, proved somewhat difficult, particularly when one manufacturer raised objection to the agent employed by another. A further step in dealing with this matter is seen in the following resolution of June 16, 1933:—

"That all agents file with the secretary at once a list of their travellers and agents, the complete list to be brought up for further discussion at the next meeting." (Exhibit 3, p. 164)

The belief of some manufacturers appears to have been that agents of their competitors were securing business by offering price concessions on lines other than corrugated boxes. To prevent such indirect price reductions it was decided that a member company could engage or retain only those agents or salesmen who were approved by the officers of Container Materials, Limited. The following resolution putting this policy into effect was passed on February 28, 1934:—

"That all company agents shall submit to the company complete information covering the activities of all of their agents, both salary and commission men, on a questionnaire to be prepared by the company for this purpose. The officers of the company shall review all such information and determine whether the representation of the agents as it is constituted at the present time is satisfactory to the company, and in the company's interests.

Any representatives who are not approved by the officers of the company must be discontinued upon notice from the company to that effect. Agents of the company shall not appoint any new representative either on salary or commission until also approved by the officers of the company." (Exhibit 4, p. 94)

Once authorized in this way to sell corrugated boxes, all such commission agents were required to make monthly affidavits that they had maintained resale prices.

2. Fixing of Prices

The members of Container Materials, Limited, on September 22, 1931, reached an agreement to maintain a common scale of prices for Ontario and Quebec, accepting for this purpose the schedule already established by the Montreal firms. A cost committee, appointed on November 20, prepared a new price schedule on a higher level, which was put into effect on January 1, 1932.

The maintenance of uniform prices for shipping containers, which as already stated are largely made to order, requires that associated manufacturers must have a common vehicle for calculating prices for the made-to-order lines. This vehicle had been furnished in the earlier period by the price figuring manual which provided standard formulae for arriving at the prices of containers of varying sizes and materials. Standard prices based on the price manual had been varied upward or downward by the use of discounts. The agreement of September, 1931, continued this system. The price schedule which came into force on January 1, 1932, was based on a somewhat different method of calculation, but the changes that were made in no way affected the basic feature of the system. Under it the uniform prices fixed for all associated manufacturers

make no provision for differing costs as between plants or for any other individual factors. The arbitrary nature of the system of fixing prices is clearly revealed in the description given by Messrs. Jenkins and Hardy, auditors for Container Materials, Limited, in 1936:

> "Take the number of square feet in the box after including one inch each way. Add to this 10 per cent to cover overhead in sales and a further 10 per cent on the resulting balance (or 11 per cent on the original total), to cover maintenance, supervision, etc.
>
> Multiply this result by the following:—
>
> The cost per square foot of board plus 10 per cent to cover waste plus 20 per cent to cover freight and the cost of the silicate used.
>
> Add to the above \$5.00 to cover the manufacturing, labour charge, taping cost and the machine charge of \$3.50.
>
> On the face of things this tariff has been built to cover cost only and give no manufacturing profit, which, of course, is far from the actual state of affairs.
>
> The actual percentages added in the tables vary considerably from the results obtained as shown by this report.
>
> The method of adding the first two 10 per cent items on the number of square feet gives a much greater result than if these percentages had been included in the multiplying decimal and based on the dollar value." (Exhibit 22, p. 5)

As the auditors point out, this method of pricing was not based on any system of cost accounting. It is scarcely necessary to emphasize that within the industry there was and is considerable variation in costs between different plants. The increase in the volume of sales in the depression years 1933 and 1934, with this system of fixed prices, enabled most of the members of Container Materials, Limited, to show a profit, according to the audit of Jenkins and Hardy, and of course yielded substantial profits to the more efficient plants.

In 1936 the cost committee of Container Materials, Limited, which perhaps should be termed the price committee, devoted a great deal of effort to changes in the pricing system which was being followed. Mr. F. C. Hayes in the course of his evidence submitted considerable historical and analytical material in an effort to show that prices in 1936 and 1937 were based on costs. The usefulness of this submission was limited because the details of the cost figures used were not available for examination. Although stress was laid on what were suggested as significant modifications in the formal method of arriving at basic prices, the net result of these changes was the substitution of one set of arbitrary price factors for another. One of the factors introduced at this time was labelled "spread," which proved somewhat of a puzzle even to persons in the industry. Mr. Hayes, who seems largely responsible for its introduction, gave the following description in a letter dated January 25, 1937, to an officer of the Hygrade company:

> "I acknowledge with thanks your letter of January 23rd and am very glad to let you know, as much as possible, how this item of \$2.09 which is called 'spread,' was arrived at.
>
> You mentioned that this seemed to be an arbitrary figure and, while this is true, to a great extent, it perhaps would be better to call it an average figure.
>
> Some time ago the writer went over the corrugated prices in Canada for the last twenty-five years and completed a summary on this entire subject. I believe that Mr. Munce has a copy of this and, if you would read it, it would give you a very good background as to how this 'spread' was arrived at.
>
> However, this actual figure of \$2.09 was not based to any great extent, except in principle, on my personal survey, but was taken from Hardy & Badden's survey of costs, made slightly over a year ago. This is the survey with the pale blue cover, of which you have a copy.
>
> You will recall that this survey was done, using the sales figure as 100 per cent and all costs, such as material, labour, factory expense, selling expense, administrative expense, pool adjustments and net profit were shown in fractions of this 100 per cent.
>
> Using this as a basis, we transferred the percentage figures, as near as possible, into costs per 1,000 square feet and, of course, the catch comes in that the only figure, which could be arbitrarily taken, is average.
>
> For instance, in factory expense, your particular figure was around 4 per cent. The highest figure was practically 16 per cent, the average being 9 per cent.

In labour, the lowest figure was slightly over 5 per cent, your figure was 7 per cent, the highest figure was slightly over 10 per cent and the average 7½ per cent.

Selling expense—the lowest was slightly over 2 per cent, yours was exactly 5 per cent, the highest was over 9 per cent, with an average of 5½ per cent.

All these various costs were taken on their average and the result was $2.09. It necessarily follows that this cannot be accurately divided on the same basis over all plants. In those where their actual costs are always below the average, more of this $2.09, naturally, goes to profit and, in plants where the actual figure is always above the average, the profit section of the $2.09 is, naturally, materially reduced.

A few plants, like your own, are in an exceptional position on this chart, but, probably, from an average standpoint, the figure of $2.09, which was satisfactory in 1935, is not so to-day due, of course, to increased wages and increased costs on various raw materials.

The reason that this does not show any relation between the costs of various grades of liner board is that this cost does not vary in relation to a reduction or increase in board prices, nor does it show an increase when running papers of various prices, except on one item and that item is the extra cost of storing a small amount of special grades, the cost of removing standard grades from the machine and putting on special grades; also, the costs on the proper trimming of paper machines, to secure these special grades. That is the reason that the costs of specials are increased from $2.09 to $2.51 and $4.18, in a few isolated cases.

With regard to your third paragraph, it is the desire of the committee to put this plan in operation in its entirety.

I would say that when this report was made there was a possibility of making an increase in this new basis, which was not warranted by an increase in raw materials, consequently, it was felt that it would be rather hard to make some of the changes and give a logical reason for doing so. Bear in mind that there were some reductions, but, of course, these are easily explained to the customer.

In view of a possible change in raw materials, it would be the writer's opinion that something along the lines of this report could be put into effect with one 'jump' rather than in stages.

One of the main aims of this report was to establish, not only for this day, but for the future, a stabilized system, whereby the price of corrugated cartons could be uniformly reached, if the price of raw materials was available.

One of the reasons for this thought in many persons' minds is that certain firms, operating both board mills and carton plants, might try to increase the price of board and maintain or reduce the price of cartons, making all their profit on the board and breaking even, or losing money on the cartons which would place the exclusive carton manufacturer in a very embarrassing position.

Trusting that this information will allow you to proceed a little farther in your deductions and assuring you of any further information upon which I can be of assistance." (Exhibit 237)

Mr. L. F. Winchell of the Hinde and Dauch company described the activities of the cost committee in the following terms in a letter to Martin Paper Products, Limited, of Winnipeg, dated November 13, 1937:—

"If you did get here, you would find that the Cost Committee is functioning pretty well. Most everything is based on as near fact as possible, but where there is a big discrepancy between equipment and organizations, there is bound to be a difference in cost, and sometimes it is necessary to strike an average, or an approximated average. I do not believe you would have much fault to find with what already has been accepted from the Cost Committee, but, naturally, you would have every reason to question a lot of it, not knowing the complete story of it . . . . " (Exhibit 278)

The same emphasis on cost is not apparent in the determination of prices in the provinces outside of Ontario and Quebec. In British Columbia, for example, Canadian Boxes, Limited, which is the only manufacturer of corrugated boxes, reserved the right from the outset to fix the prices which other manufacturers must observe in its territory. In forwarding its agreement on December 7, 1931, Canadian Boxes, Limited, made the following stipulation:

"You will understand, of course, that we have signed the agreements with the full understanding that quotations in British Columbia are to be made only from the Price schedule furnished by ourselves, and not according to any Eastern schedule."

(Exhibit 282)

In the Prairie Provinces, where there are only two plants, the method of establishing prices is not so clearly defined. Mr. Henry Hilton of Hilton

Brothers, Limited, one of the Winnipeg concerns and a subsidiary of The Corrugated Paper Box Company, Limited, Toronto, wrote to Container Materials, Limited, on April 20, 1937:

> "According to our understanding of the agreement between Martin Paper Products, Corrugated Paper Box Company and Container Materials, Limited, that Martin and ourselves have the right to make the prices for this territory and so long as this agreement is in force the other agents are obliged to abide by our prices." (Exhibit 44)

On the other hand, A. T. Whealy, president of The Corrugated Paper Box Company, Limited, expressed himself as follows with respect to the determination of prices in the Prairie Provinces:

> "The decimals in the last analysis are set by Container Materials, Limited, regardless of what apparent rigmarole the things may go through to arrive at the point." (Evidence, p. 518)

The two firms in the Maritime Provinces appear to have been consulted before prices were set for this territory. Even after January, 1936, when the Ontario and Quebec prices were made effective in the Maritime Provinces, their formal assent to new price schedules is recorded. It does not appear that any effort was made to establish prices in the Maritimes on the basis of the costs of the two Maritime manufacturers.

The freedom of action in making price changes which has been retained by the Western plants is indicated by the records of Container Materials, Limited:

—	Ontario and Quebec	Maritime Provinces(1)	Prairie Provinces	British Columbia
October, 1932	increase	increase	increase	no change.
March, 1933	no change	no change	no change	increase.
May, June, 1934	increase	increase	no change	no change.
January, 1936	no change	decrease	no change	no change.
April, June, 1937	increase	increase	increase	increase.
March, May, 1938	decrease	decrease	no change	decrease.
October, 1938	decrease	decrease	decrease	no change.

(1) From January, 1936, Ontario and Quebec prices have been effective in the Maritime Provinces.

Regulations regarding prices are generally adopted at meetings of members which are described as meetings of the agents of Container Materials, Limited, to distinguish them from meetings of directors of the company. The cost committee has generally been instructed to prepare price schedules to give effect to desired increases or decreases in the general price level. As an example, the minutes of a meeting of agents on September 8, 1932, record:

> "A general discussion took place in reference to prices and the Cost Committee were requested to submit new schedules based on giving an advance of approximately 5 per cent." (Exhibit 3, p. 101)

At a meeting of agents on April 24, 1934, "the Cost Committee were requested to submit new schedules based on giving an advance of approximately 10 per cent increase for the Provinces of Ontario and Quebec, prices upon approval to take effect May 16, 1934."

No further general change in the price schedule for Eastern territory was made until April 23, 1937, when new prices were adopted "on the alternative method submitted by the Cost Committee, using decimal 66 as a basis for ·016 liner," according to the minutes of February 25, 1937. Mr. Hayes had pointed out in a letter of January 25, 1937, already cited, that when the report of the Cost Committee was made in 1936 "there was a possibility of making an increase in this new basis, which was not warranted by an increase in raw materials." Decreases in prices which were made in 1938 were put into effect without any preliminary discussion being recorded in the minutes.

3. Delivered Prices

As a necessary corollary of the uniform price policy of Container Materials, Limited, no customer is allowed to secure a saving in price because of his proximity to a particular box plant. A system of delivered prices has been developed, supplemented by a method of figuring transportation charges for those areas in which no box plant is located. The possibility of variations in price by reason of differences in transportation charges is well illustrated in the following statement made in a letter dated May 4, 1934, from London Shipping Containers, Limited, to Maritime Paper Products, Limited:

> "Concerning the item of free delivery, we believe that you rather recall the circumstances which existed in this respect in Ontario several years ago, when we first got together. At that time, our generally specified free delivery points were where the various Box manufacturers concerned were operating, but there was so much difficulty experienced with regard to the various freight ratings and the equalization on different Truck Companies, that we were reluctantly compelled to make all points delivered in Ontario. We believe there are two or three minor alterations on this Problem in the Province of Quebec, but we are quite in accord with your thought that this might just as well be considered delivery points all over your Province, rather than leave a loophole open for various differences in freight and cartage." (Exhibit 277)

On October 31, 1931, the secretary of Container Materials, Limited, issued the following regulation regarding delivered prices in Ontario and Quebec:—

> "Freight may be prepaid to all points provided the rate equalized on the nearest factory point is not over 50 cents per 100 pounds." (Exhibit 3, p. 9)

This regulation was cancelled on November 20, 1931, and the following substituted:—

> ". . . freight may be allowed to all points in the Province of Ontario and Quebec except North and West of and including North Bay where a maximum freight allowance of 50 cents per 100 pounds may be made." (Exhibit 3, p. 10)

The only possibility of variation by reason of transportation charges in the case of the Prairie Provinces, where both plants are located in Winnipeg, arises out of the weight of materials used. This possibility is resolved by setting standard weights for shipments. The policy adopted for this territory was set out in a notice of the secretary dated November 2, 1932:—

> "all quotations are to be made F.O.B. destination, sales tax extra, quotations to be figured at prevailing Winnipeg prices, plus freight. . . . " (Exhibit 3, p. 132)

In British Columbia, where there is only one manufacturer of corrugated boxes (although one other plant manufactures solid fibre containers), the policy of selling f.o.b. factory, with actual transportation charges added, was adopted.

The problem of fixing prices in the Maritime Provinces was a source of difficulty to the combination for a considerable period. It was resolved in 1936 by applying the Ontario and Quebec schedule of prices to this territory. The first method introduced to secure uniform price quotations to customers in the Maritime Provinces was that of selecting certain localities as free delivery points and several other localities on which freight charges could be equalized. There are two plants in the Maritime Provinces, one at Fairville, N.B., and the other at Halifax. This method created the paradoxical situation whereby the Halifax plant could ship to Fairville and sell at a delivered price and the Fairville plant could do the same in Halifax, but at some intermediate points the customer would be charged freight. The following extract from a letter dated March 15, 1934, from Maritime Paper Products, Limited, to Hardy and Badden illustrates this condition:—

> "We have several customers located in the town of Truro and, some of them are objecting quite strenuously on account of having to pay freight charges equalized on Pictou. The trouble is that Pictou is further from any corrugated container plant than is Truro, but the customer whose plant is located in Pictou obtains free delivery, whilst the Truro account is compelled to pay freight charges. To bring this more forcibly to

customers' attention, goods for Pictou are quite often shipped on the same truck as Truro orders and, of course, Truro deliveries are dropped off the truck first, on which freight charges are applicable. But the longer haul goes through 'prepaid.' Under these circumstances we are strongly of the opinion that Truro should be added to the list of Maritime F.O.B. points." (Exhibit 277)

Truro was made a free delivery point, but other similar questions arose and on June 1, 1934, a ruling was made to allow freight to be prepaid to all towns in the Maritime Provinces. Next it was found that Ontario and Quebec manufacturers, quoting central prices with the 50 cent freight allowance to customers in the Maritime Provinces, were thereby quoting prices lower than the schedule for the Maritime manufacturers. Finally on January 13, 1936, the Ontario and Quebec price schedule was adopted for the Maritime Provinces with the following provision for transportation charges:—

"The same freight conditions as in effect in Ontario and Quebec will also now be in effect in the Maritime Provinces, namely, shipments will be equalized on either Halifax or Saint John, with a maximum freight allowance of 50 cents."
(Exhibit 3, p. 287)

This policy of delivered prices operates to the particular advantage of a company which owns plants at different points, as shown by the evidence of G. W. Brown, vice-president and general manager of Gair Company, Canada, Limited. This company absorbed a number of separate manufacturing companies in 1936 and proceeded to allocate business among the various plants to effect all possible savings in freight charges. Mr. Brown's evidence on this point is as follows:—

"Q. In your own box factories, Mr. Brown, is there a division of orders—each plant being assigned the orders for the particular area in which it operates?—A. We are doing that more and more all the time—one of our policies is to zone the business.

Q. You will effect large economies in freight, I presume?—A. That is the principal purpose and to let a plant in a given zone run the business in that zone. When we acquired these companies—outside of Windsor—they all had representatives in Toronto and Firstbrooks had representatives in the Province, and London were shipping to Toronto and we were shipping to London; Hamilton was shipping to Toronto and we were shipping beyond Hamilton and we felt, for the sake of economy we would give them the business in their own particular zone.

Q. Well, haven't the customers in these zones been charged freight—isn't freight charged in the price?—A. The price is delivered—the freight is in the price.

Q. In some of these cases you will not have any freight cost to meet yourselves? —A. Yes, there is always the local cartage—there is the nearby freight. There will be some saving, how much cannot be estimated.

Q. It will be a saving to your company, not to your customer.—A. Yes."
(Evidence, pp. 1240-1)

Under conditions of competitive pricing consumers located at or near points of production would normally tend to purchase their box requirements from a local plant, while customers removed from a centre of production would find it necessary to pay the cost of transportation from the nearest plant. If the local plant advanced or upheld its prices the nearest competitor would become more active in seeking customers as the price differential would enable goods to be shipped farther afield. The fact that delivered prices are charged without transportation costs being shown, or in other words that freight is said to be prepaid, does not mean that such costs are not borne by the customers of box plants. Instead of these charges including the actual cost of shipping in each case, they become part of the purchase price of all buyers irrespective of their location or of the actual shipping costs. It is true that the higher the shipping charges the box manufacturer has to pay on any shipment the lower his net return, but as the fixed prices contain an average transportation charge this factor is not as important as it would be if prices were f.o.b. plants, shipping charges added. The result is that there is more extensive cross-shipment of products and consequently higher total transportation charges than would be the case under competitive conditions. As illustrated by the evidence of Mr. G. W. Brown,

above cited, any savings which a company can effect by confining its sales to its own territory will, under these regulations, be retained by the box manufacturer since it cannot be passed on to the customer even though the customer took delivery at the factory door.

4. Control of Quality: "Non-Test" Boxes

The maintenance of prices by manufacturers associated in Container Materials, Limited, has involved not only a uniform system of calculating prices but also certain regulation of materials used in the manufacture of containers. In part, this standardization of materials has resulted from the specifications established for shipping containers under the Canadian Freight Classification and similarly by the Trans-Atlantic Freight Conference. Considerable movement of commodities takes place also through other channels of transportation, including motor trucking and parcel post, which are not subject to these freight specifications. Containers which do not meet the railway specifications are referred to in the industry as "non-test" boxes. The establishment of specifications for such "non-test" containers has been one of the functions assumed by Container Materials, Limited, in its program of establishing uniform prices throughout the industry.

When fixed prices for shipping containers were established for Ontario and Quebec on September 22, 1931, by the adoption of the Montreal schedule of prices, no provision was made for non-test boxes, so that if such containers were sold it would be at the prices set for test boxes. In the price list of January 1, 1932, provision was made for two types of non-test containers at prices which were only 6·1 per cent below the price for common-size test box.[1] The relative cost of material was shown in a memorandum of Container Materials, Limited, dated February 11, 1932, to be $5 per thousand square feet for a test box, $4.35 for one type of non-test box and $3.70 for the other type. With such a slight difference in selling price between test and non-test boxes, in spite of considerable differences in cost of materials, some competition developed between the box manufacturers to supply a better grade of non-test box than was contemplated when the prices for these containers were established.

As no definite specifications were set for the strength of the paperboard used in non-test boxes, some box manufacturers had the paper mills supply for their use a better quality paperboard than was used by their competitors. This situation is reflected in a letter dated December 5, 1934, from Canadian Wirebound Boxes, Limited, to the Brompton Pulp and Paper Company, Limited, a portion of which reads as follows:—

> "It will not be very long before all non-test materials are eliminated other than dry finish. This condition has arisen due to Bathurst's very high test Kraft sheet which they have recently put on the market. It was felt advisable to eliminate all non-test materials with the exception of ·009 dry finish." (Exhibit 202)

This prediction was based on action taken at a meeting of Container Materials, Limited, on November 22, 1934, when the following resolution was passed:

> "That on and after January 1, 1935, all non-test decimals for boxes are cancelled and eliminated, and that no caliper between ·016 and ·009 be used, and that ·009 used shall be dry finish, regardless of it being kraft, chip or screenings, and that no better quality than ·009 dry finish corrugated now in use to be supplied[2].
>
> The above to apply in all territory."
>
> (Exhibit 3, p. 240)

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[1] The price of a test box 11¾ x 11¾ x 11¼ was $63.15 per 1,000 in January, 1932, and of a non-test box of this size, $59.30.

[2] Caliper of ·016 or ·009 (sometimes referred to as 16-point or 9-point) refers to the thickness of the paperboard as determined by the use of calipers. Thus "·016" refers to paperboard having a caliper measure of sixteen one-thousandths of an inch in thickness. The weight of Jute 16-point liner board, according to present lists, is 62 or 64 pounds to 1,000 square feet, the weight of Fourdrinier Kraft is 47 to 1,000 square feet.

Further information on the competition in quality of paperboard and also on another reason for the elimination of the non-test container is given in a letter of November 26, 1934, from the Hinde and Dauch Paper Company of Canada, Limited, to Maritime Paper Products, Limited:

"Last week at Container Materials' meeting, some of our competitors kicked on the quality of our ·009 brown chip sheet, claiming it was too good for the purpose. As Bob has probably told you, all non-test decimals have been wiped out, effective as of January 1, and no calipers below ·016 will be allowed for shipping case purposes, and interior packing will be limited to a ·009 sheet of a dry finish and of a quality not superior in any way to the ordinary corrugating sheet that is now put out. This will do away with the ·009 wet finish kraft and the ·012 that has been put on the market, and I believe will lessen some of the troubles you have now with non-test boxes. The situation was growing where the ·009 material was getting to be considerably exploited and paper mills were standing the wallop, having to furnish sheets of qualities very much higher than ·009 normally should be. For another thing, it was going to result in a loss of about 20,000 tons a year to the corrugated shipping case industry, and it was estimated that there was a potential loss in sales value possible of better than one million dollars. Hence the action that was taken." (Exhibit 277)

The decision to remove non-test boxes from the market led to objections on the part of some of the box manufacturers. F. C. Hayes of Shipping Containers, Limited, Montreal, wrote to H. J. Badden on January 2, 1935:

"Far be it from us to criticize any of the decisions of Container Materials, Limited, but we are certainly inclined to think that lately there have been several matters being shoved through rather hurriedly. We refer first to the five minute discussion which eliminated the Non-Test carton and which as you know had quite a violent reaction at the last meeting." (Exhibit 219)

He wrote again on March 15, 1935:

"For your information, we are continuing to receive strenuous protests from some of our customers regarding our inability to supply them with non-test containers . . ." (Exhibit 220)

The Canadian Wirebound company also registered some objection to the regulation, in a letter to Hardy and Badden dated January 23, 1935:

"We are fully aware of the feeling that exists by our customers through the elimination of non-test decimals and we believe that the matter of restoring the non-test decimals should be considered at once." (Exhibit 200)

In spite of protests from some box manufacturers and from former purchasers of non-test containers, the members of Container Materials, Limited, did not supply such boxes except at the prices for test containers until March, 1936. In the interval efforts were made to get the paper mills to agree to supply only certain qualities of non-test paperboard. This is indicated by the following extract from a letter dated March 13, 1935, from Canadian Wirebound Boxes, Limited, to Hardy and Badden:

"This matter of a standard non-test carton was discussed at the meeting which was held in Montreal and at that time it was felt advisable to let it stand for another month to give the board mills an opportunity of deciding on definite standard materials for a non-test box." (Exhibit 200)

The board mills associated in Shipping Case Material Manufacturers Association agreed on certain standards of thickness in a resolution passed on April 25, 1935, which reads as follows:

"That no caliper between ·009 and ·016 shall be made. The quality of ·009 shall be dry finish, except when made for use other than shipping cases." (Exhibit 25, p. 19)

Members of Container Materials, Limited, agreed to re-introduce the non-test box on March 18, 1936, when the following resolution was passed:

"That effective forthwith to apply for the Provinces of Ontario and Quebec only, a non-test box is adopted at decimal 52. Maximum test to be 160 pounds stamped

in a legible way non-test, with manufacturers stamp dated with the month and year of manufacture, and to be made to the following specification—

Outside 9 point dry finish kraft.
Corrugating medium either 9 point straw or 9 point dry finish kraft.
Inside 9 point chip.
This non-test box may be supplied to the Beer, Wine, Canners and Jam trade
All other conditions as applying to test boxes to be in effect for the above."

(Exhibit 3, p. 291)

A similar provision was adopted for the Maritime manufacturers a few weeks later, and for the Manitoba members in January, 1938.

The materials specified in the above resolution, according to the evidence of G. W. Brown of Gair Company, Canada, Limited, were selected in order to divide the business of supplying non-test materials equally between the kraft and jute paper mills. It is to be noted that a maximum quality was established by this ruling for this type of box, which meant that boxes of the quality which had previously been produced could no longer be supplied to customers. The price of the non-test box was set in closer relationship to the cost of materials than had previously been the case, as the decimal established would yield a selling price about 12 to 14 per cent lower than for a test box. This differential was not as great as had existed prior to the formation of Container Materials, Limited, according to a statement made in a letter dated October 30, 1931, from Canadian Wirebound Boxes, Limited, to Hardy and Badden which reads as follows:

"Under the old price schedule test cartons were 15 per cent off and non-test 30 per cent off, and on partitions test were 15 per cent off and non-test 25 per cent off."

(Exhibit 200)

The reasons in general advanced for restricting the types of non-test cartons were two. First, that as no definitive standards for this type of container were established by any regulatory body, such as the Board of Railway Commissioners, the user had no protection against the possibility of being supplied with inadequate shipping containers. Secondly, as there were no definite specifications for the materials to be used in the manufacture of non-test boxes, the box manufacturer would be required to carry in stock a large supply of paperboard of various kinds in order to meet possible demands of his customers. In a market where the determination of price is left to competition among possible suppliers, the increase in standardization of materials and products offers some advantages in the way of lower costs of manufacture tending to produce reductions in selling price. When, however, prices are not set through competition in the market, such savings as may result from standardization are less likely to be passed on to the customer and more likely to be retained by the supplier in the form of profits. In the case of this industry the attempt has been made to discourage the use of non-test boxes in order to retain trade for what is considered the more profitable manufacture of more expensive containers. It can hardly be contended that decisions of this character can be safely left to the discretion of one interested group with assurance that the public interest will at all times be protected.

5. Quantity Discounts

As the manufacture of shipping containers is to a large extent a machine operation, there are certain reductions in unit costs as the volume of production of the same article increases. No evidence was found to indicate the actual extent of such reductions or the limits within which they can be effected, but that containers can be made and sold more cheaply in large quantities than in small has been recognized in the industry by the granting of quantity discounts on large orders.

Prior to the formation of the Canadian Corrugated and Fibre Box Manufacturers Association in 1929, it had been a practice to charge $1.00 extra on

orders of less than one thousand boxes and to give a discount of 5 per cent on orders of one carload or more, a carload averaging approximately 15,000 boxes. To the box manufacturer the advantage of large orders lies not only in the saving in manufacturing costs but also in lower freight charges for carload shipments, since boxes are now sold on a delivered basis.

Under the schedule of prices fixed by the Canadian Corrugated and Fibre Box Manufacturers Association a detailed scale of discounts was set up. The regular price was charged on orders of 1,000 to 2,000 boxes, and discounts up to 5 per cent were given on larger orders. The 5 per cent discount, as before, applied on carload orders. On orders of less than 1,000 boxes extra charges were added, amounting to as much as 25 per cent on orders of less than 100 boxes.

When the agreement on prices was first re-established under the present combination, no provision was made for quantity discounts and none was allowed. This situation was maintained until June 16, 1933, when a regulation was adopted at a meeting of agents of Container Materials, Limited, providing for quantity discounts:—

> ". . . where orders are given by one buyer for any one size and style of box for complete delivery within seven days, and where the order requires at least the quantities set out hereafter. The discounts as noted may be allowed off the present tariff prices:—

	Quantity discounts $3\frac{1}{2}$%	5%
All corrugated and solid fibre boxes except 275 test..............................	125,000 sq. ft.	250,000 sq. ft.
·100 and over fibre and 275 corrugated regardless of construction............	85,000 sq. ft.	170,000 sq. ft."

(Exhibit 3, p. 164)

The discount for 125,000 sq. ft. or one carload was established under this regulation at $3\frac{1}{2}$ per cent, whereas an order of this size when quantity discounts had previously been in effect was given the larger discount of 5 per cent. These quantity discounts were made applicable in all territories except British Columbia.

The earlier system of making extra charges for quantities under 1,000 boxes was not re-introduced, but the addition of certain fixed charges in calculating the price of boxes had a similar effect on orders of less than 1,000 boxes. On orders of less than 100 boxes the unit price is approximately 50 per cent higher than for 1,000 boxes, and the price is about doubled on orders of less than 50 boxes.

The regulations governing quantity discounts to be granted by the manufacturers participating in the program of this combination allow no discretion to the individual manufacturer to vary his terms to meet the requirements of his own business. Even if a manufacturer would find it profitable to grant discounts on large orders of less than one carload, he has no power to do so. Under the same system of regulation he cannot allow a greater discount than 5 per cent on orders of more than two carloads, even if economies in the supply of such large quantities would enable him to offer a larger discount. The manufacturer is also bound by the limitation that in order to qualify for quantity discounts orders must be for complete delivery within seven days. One manufacturer associated with Container Materials, Limited, but not bound to observe this limitation because of prior sales contracts, allows quantity discounts on orders deliverable within much longer periods.

6. Supplementary Forms of Price Control

Once uniform prices were established for the products covered by the agreement with Container Materials, Limited, measures were adopted to prevent any concessions in price being made in other ways.

Printing Charges

Although the printing of shipping containers is combined with other operations in their manufacture, it has been the custom in the industry to make a separate charge for printing. The first price schedule established by Container Materials, Limited, continued the rates previously in effect since the item in the price list dated January 1, 1932, reads:—

> "Printing charges $2.50 and $3.00 net (as before)."

This regulation required that a charge of $2.50 per thousand or smaller quantity be made for cartons printed in one colour, and $3 when the carton was printed in two colours. On January 8, 1932, this regulation was amended to provide that for printing in more than two colours a charge of $3 per thousand be made for each additional colour. These printing charges were made effective for the Prairie Provinces in June, 1932, but the sole manufacturer in British Columbia pursued his own policy in regard to the extra charges for printing. The price list of October 1, 1932, continued the same charges for printing, but rates of $6 for three colours and $9 for four colours were set out in the schedule.

No further change was made in printing charges until May 16, 1934, when the following rates were set:—

One colour	$ 3.50
Two colours	4.50
Three colours	7.00
Four colours	10.00

From this time on there was continued discussion among members of Container Materials, Limited, as to the basis of setting printing charges. As long as such charges were based merely on the number of colours used, it became possible for competition to develop among manufacturers in providing more elaborate printing on cartons. Under the control of Container Materials, Limited, no manufacturer could quote a price lower than any other manufacturer, but one factory might give more printing for the same money. Such concessions tended to become a disturbing competitive element in the price-controlled market. A memorandum dated October 22, 1936, secured from the Gair company, indicates that the matter of printing charges had become a live issue by that time:—

> "In connection with the report, there was considerable discussion about such items as printing. Some members do not want to increase their prices for printing and wish to leave them on the low level and attempt to give the customers as much ink as possible. The result of this part of the discussion is that at the next meeting everybody is to bring some method or means of a fool-proof system of estimating ink."
> (Exhibit 118)

As Mr. Brown of the Gair company expressed it:—

> "You couldn't agree not to compete on boxes and agree to compete in ink."
> (Evidence, p. 1181)

A new system of calculating printing charges was established on June 23, 1937, which provided:—

> "All printing charges to be based on the number of ½" squares called units involved in the printing set-up." (Exhibit 3, p. 391)

This regulation fixed the minimum printing charges for one colour at $3.75 compared with the previous general rate of $3.50, and provided for higher charges depending on the area of the surface printed.

The chief argument advanced in support of this considerable advance in printing charges was that the previous rates had not covered the printing costs involved. Inasmuch as the prices fixed under Container Materials, Limited, have been profitable to the manufacturers, the claim of inadequate charges for one operation in the process of manufacturing does not justify an advance

in prices. The sole manufacturer of corrugated boxes in British Columbia has not found it necessary to increase the charges for printing which were fixed in March, 1933, at $3 per thousand for one colour and $4.50 per thousand for two colours. It is evident that costs of printing, in common with other manufacturing costs, must vary among different box factories, and only an arbitrary method of fixing charges could produce uniform rates for this operation.

Other measures

The possibility of price concessions through the purchase of scrap material from customers was barred by resolutions of December 17, 1931, and March 8, 1932.

The custom of some manufacturers in loaning stitching machines to customers who might use them to put together certain types of boxes was frowned upon in a resolution adopted on February 11, 1932, and definitely prohibited by a regulation passed on April 15, 1932.

Sometimes the box manufacturer supplies his customers with gummed paper tape or silicate to be used in sealing containers after packing. Under the regulations of Container Materials, Limited, uniform prices are set for such products when sold by members of Container Materials, Limited.

In the box industry, as in most industries, imperfect or sub-standard boxes are sometimes inadvertently produced. Such imperfect products are usually sold as "seconds." Prior to the formation of the present combination, box manufacturers had sold their "seconds" as job boxes, but on June 2, 1932, it was decided

> "That on July 31, 1932, sale of job boxes or seconds shall be discontinued, and after that date no further sales or deliveries to be made." (Exhibit 3, p. 93)

The amount of revenue from the sale of such boxes was not ascertained. Since 1932, however, the only recourse of the manufacturer with odd lots of boxes on his hands has been to scrap them. The reason for prohibiting the sale of job boxes is given in a letter of September 1, 1932, from Container Materials, Limited, to Maritime Paper Products, Limited:—

> "In answer to the question of selling cartons that were made in error at less than the regular prices, we do not understand your trying to do this, they should be scrapped, otherwise it provides a loophole whereby considerable price cutting could be indulged in, and it has been decided here that the only thing to do is to scrap any such boxes rather than demoralize the whole industry, particularly if a customer wanted a box somewhat over the size in question, the difference between the price that you would be willing to sell him the ones you have in stock, and the schedule prices on the other size would be so great that it would invite criticism."
>
> (Exhibit 277)

Corrugated boxes are sometimes supplied with partitions which in certain cases are not required to be the full height of the container. The price list issued by Container Materials, Limited, on January 1,1932, required "all partitions to be figured full heighth." This ruling was held to apply to partitions which might be supplied for wooden boxes but on November 15, 1932, an exception was made by a ruling that "where partitions are figured for use in wood boxes the actual dimension furnished by the customer shall be used for figuring purposes instead of full heighth." The regulation regarding the pricing of partitions has been continued and appears in substantially the same form in current price schedules. On February 4, 1936, a resolution was passed "that partitions are to be figured height of article . . . . .", but this was rescinded on February 19, 1936.

The development of methods of control by Container Materials, Limited, has been traced in considerable detail because it appears to represent a progressive assumption of group control over the sales organizations of the member companies arising as an outgrowth of the basic agreement to maintain uniform prices. The extent of the control which has been exercised, and the

formal and exacting nature of the checks which have been adopted to render it effective, mark this important industry as one under monopolistic control, a control which leaves other interests which are affected by its policies with little influence in the determination or revision of these policies.

7. Prices and Profits

The trend of corrugated box prices in the period prior to the formation of Container Materials, Limited, is indicated in Section II of this report. Under the agreement of the manufacturers in the Corrugated and Fibre Box Manufacturers Association, prices of shipping containers were held unchanged from October, 1929, until the break-up of the association early in 1931. After the establishment of price-fixing arrangements under Container Materials, Limited, prices were advanced from the level resulting from the active competition of 1931 by increases in 1931, 1932 and 1934. From May, 1934, until April, 1937, no general change was made in the uniform price list used by each manufacturer participating in the combination.

Prices of liner board and strawboard prior to the formation of Shipping Case Material Manufacturers Association in 1935 are reviewed in the discussion of this organization in Section VIII. After a slight increase in May, 1935, no changes in liner board and strawboard prices were made until April, 1937, when higher prices were put into effect. Price changes in both corrugated boxes and container paperboards have tended in recent years to take place almost concurrently and to approximately the same extent.

As prices of corrugated boxes vary with changes in such features as the size and style of box and the quality of the material, no general unit price can be given. It is the practice to refer to the prices of corrugated boxes in terms of the basic decimal from which prices are calculated for a lap-end box of 16-point liner board. The price of a box $11\frac{3}{4}$ x $11\frac{3}{4}$ x $11\frac{1}{4}$ was used by F. C. Hayes to illustrate the trend of prices in recent years.

Comparison of prices of corrugated boxes in Canada and the United States presents considerable difficulty because of the made-to-order nature of the products. Representatives of the Canadian industry claimed that direct comparison could not be made since the qualities of materials used in Canada were generally higher than in the United States. While it is true that the same railway specifications are in use in both countries, until very recently Canadian paperboards of similar minimum test qualities have been heavier for corresponding grades, and some lightweight boards which have been introduced in the United States have not been accepted in Canada. Although these difficulties would prevent any direct comparison of actual prices in Canada and the United States, unless a detailed examination were made of the respective products and prices, it is clear that the trend of prices in the latter country has been a factor of major importance in influencing price changes in Canada. In the following table an index of prices of corrugated containers in the United States is given, based on information prepared by "Fibre Containers," a leading American trade journal, much of which appears in its number for August, 1938. The limitations mentioned above should be borne in mind in comparing this index with that for Canada, which, since 1931, represents the prices fixed by the Container Materials combination for a typical corrugated box of 16-point liner board.

TABLE 10.—TREND OF PRICES OF CORRUGATED BOXES IN CANADA AND UNITED STATES, 1926-1938

Year	Canada (1)		Index (1926=100)	
	Decimal used by C.M.Ltd.	Price per 1,000 boxes 11¾x11¾x11¼	Canada	United States
		$		
1926	....	107.40	100·0	100·0
1927	....	107.40	100·0	102·7
1928	....	107.40	100·0	90·0
1929	....	107.40-92.20	85·8	75·9
1930	....	92.20-66.90	83·8	68·0
1931	....	56.80-63.15	54·9	53·2
1932	53-55	63.15-65.10	59·3	43·0
1933	55	65.10	60·6	48·9
1934	55-60	65.10-69.95	64·6	65·0
1935	60	69.95	65.1	60.6
1936	60	69.95	65·1	57·8
1937	60-66	69.95-75.75	69·2	63·1
1938	66-48	75.75-58.35	63·3	52·7
1938, January	66	75.75	70·5	....
1938, March	60	69.95	65·1	....
1938, October	48	58.35	54·4	49·1

(1) Where two sets of figures are shown for one year a change in price was made during the year. The first figure represents the fixed price at the commencement and the second figure the price at the close of the year.

From this table it will be seen that except for the years 1927 and 1934 the average level of prices in the United States has been lower, in relation to prices prevailing in 1926, than the level of prices in Canada on the same basis. The marked decline in the general level of prices of corrugated boxes in both Canada and the United States must be viewed in relation to the fall in the prices of materials, and, more especially, in relation to the large increase in the volume of production of shipping containers, as described in Section I of this report. The increase in business from 1932 to 1937 has meant increasing profits for Canadian corrugated box manufacturers, which is shown by the results of the surveys which Jenkins and Hardy have made of the operations of the members of the combination in Ontario and Quebec. While no detailed examination has been made of the methods followed by Jenkins and Hardy in preparing their reports, the results of their surveys may be taken as indicative of the trend during the period under review. The following table gives the principal results reported by Jenkins and Hardy in regard to the earnings of the associated companies operating in Ontario and Quebec. These figures represent the companies' calculated earnings on this class of business after payment of income tax, and, in the case of quota members, after pool tax adjustments:

TABLE 11.—NET PROFITS OF CORRUGATED BOX MANUFACTURERS IN ONTARIO AND QUEBEC, INCLUDING BOTH QUOTA AND NON-QUOTA COMPANIES ASSOCIATED WITH CONTAINER MATERIALS, LIMITED, 1931–1937.

Year	No. of Firms	Invested Capital (including bonds)	Net Profit or Loss	Profit or Loss on Invested Capital (including bonds)	Total Sales	Net Profit on Sales: Average per company	Range by companies: Low	Range by companies: High
		$	$	%	$	%	%	%
1931	13	3,320,323	(406,779)*	(12·25)*	4,882,190	(8·33)*	(29·07)*	7·04(²)
1932(¹)	.....	.....	.....	.....	.....	.....	.....	.....
1933	14	3,461,478	202,205	5·84	5,115,254	3·95	(4·67)*	12·65
1934	14	3,578,846	397,324	11·10	6,265,371	6·34	(0·10)*	13·55
1935	14	3,446,615	511,335	14·83	6,869,339	7·45	0·40	16·37
1936	11(³)	4,054,820	561,187	13·84	8,373,164	6·72	2·37	13·94
1937	11(³)	4,734,721	789,278	16·67	9,711,116	8·13	2·93	21·12

* Loss.
(¹) No survey was made for 1932.
(²) Only one company showed a profit.
(³) The change in the number of firms reporting in 1936 and 1937 is due to the absorption of six companies by Gair Company, Canada, Limited, and the inclusion of two new associated companies, G. W. Hendershot Corrugated Paper Company, Limited, and Kraft Containers, Limited.

Counsel for Container Materials, Limited, laid stress, during the investigation, upon the fact that for most industries using corrugated boxes their price forms only a minor part of the total cost of manufacturing and distributing merchandise. Considerable statistical material was produced by F. C. Hayes in an effort to demonstrate the apparently inconsequential cost of shipping containers embodied in the retail price of a number of staple articles. The implication of the argument which was advanced would appear to be that, so far as the consumer is concerned, it is immaterial what price is charged for shipping containers, as no changes upward or downward could be reflected in the final price of any article shipped in corrugated boxes. Such a contention disregards the fact that it could be applied with equal force to any relatively minor item of total cost of a single delivered product, and that the cumulative effect of changes in such items of cost in any industry would inevitably result in significant differences in total cost. This condition applies to the corrugated box industry itself as well as to firms buying corrugated boxes in connection with the supply of consumer goods. The prices of all such goods sold to other firms play their cumulative part in determining the price at which sales will be made at retail to the consumer. The inter-relationship of prices and the fundamental importance of price considerations are well set out in a memorandum issued by the National Industrial Recovery Board of the United States at a time when the proponents of industrial price control were most active:

> "The price of an article holds a strategic place. It is the center of a competitive struggle between rival firms. It determines the maximum costs—which involve prices of other products—which may be safely incurred in its production. It is the link by which a commodity is bound to other commodities in a great competitive economy. It is a dominant condition of the competition of industries for raw materials and for markets for finished products. A price of a commodity is affected with an interest to an industry, to the industrial system, and to the general public.
>
> A price does not stand alone. It is inseparably interlinked with a multitude of other prices. The need for keeping its inter-relations fluid forbids a price—except for imperative reasons—to be frozen into so inflexible a form as a cost formula. In a program of recovery a flexible price is a valuable instrument in the correction of industrial maladjustment."

That the price of corrugated boxes may influence the prices of other products is borne out by a comment in a letter dated March 21, 1936, from Maritime Paper Products, Limited, to the Montreal office of Hardy and Badden:—

> "One of our customers informs us that an official of one of the Montreal Glass companies told him, in answer to his inquiry of why the glass company was able to make reductions in their prices, that it was partly because of the fact that they were purchasing their corrugated containers for less than previously." (Exhibit 277)

The reduction in this case resulted from the re-introduction of the cheaper non-test containers. The importance of the price level of corrugated containers as a factor in the costs of users of such shipping cases is indicated by the volume of sales of the industry in 1937, which were in excess of $10,000,000. A variation of 10 per cent in price on this volume would be of the magnitude of one million dollars, which although spread over many users of boxes would nevertheless be an item of some significance in the economy as a whole. A change of more than 20 per cent in price resulted from price reductions during the year 1938, occurring mainly during the period of this investigation and following price reductions in the United States.

8. Note on Customs Duties

In addition to activities connected with the enforcement of the price agreements, Container Materials, Limited, has been utilized as an association to further in other respects the interests of the parties to this combination. Committees from Container Materials, Limited, have dealt with freight associations in efforts to secure wider approval of corrugated and solid fibreboard containers by transportation companies. The organization has also taken an active part in customs tariff matters.

Prior to 1930 there seems to have been little concern in the industry with respect to tariff protection on shipping containers or on materials for its manufacture.

Throughout the period from 1906 to September, 1930, customs tariff duties applying to importations of corrugated and solid fibre boxes remained unchanged. Such imports were classified under item 199, the general paper manufactures item, for which the rates of duty were:—

British Preferential	22½ per cent
Intermediate	32½ per cent
General	35 per cent

Paperboard materials for the manufacture of these classes of containers entered during the same period under a general paperboard item on which the following rates of duty applied:—

British Preferential	15 per cent
Intermediate	22½ per cent
General	25 per cent

On September 17, 1930, a separate tariff item, 199b, was established for "containers of corrugated or laminated fibreboard" with specific duties of 1, 1¼ and 1½ cents per pound under the British preferential, intermediate and general tariffs respectively. In the following year the wording of the new item was changed to read "containers wholly or partially manufactured from fibreboard or paperboard" with the same specific rates of duty, but with an added provision that the rate of duty under the general tariff should not be less than 35 per cent. This provision was included because of the fact that set-up and folding boxes, which are relatively light in weight, were included in this tariff item. The specific rate of duty tended to be the effective rate in so far as shipping containers were concerned, as the duty of 1½ cents per pound or $30 per ton would exceed 35 per cent whenever the value of imported containers was less than $87 per ton. Since 1931 prices in the United States, the principal source of imports, to which the general tariff applied until January 1, 1936, have generally been below this level for most types of shipping containers.

Rates of duty on materials for the manufacture of shipping containers remained unchanged from 1906 until 1931, when the rates under the intermediate and general tariffs were advanced to 25 per cent and 35 per cent respectively.

The customs duties as outlined above were supplemented from September, 1930, by the establishment under the provisions of section 36 of the Customs Act of minimum valuations for certain shipping case materials, and in 1932 for containers as well when imported from the United States. As these valuations for duty purposes, from the time of their establishment in 1930 and 1932 until the adoption of the N.R.A. codes in the United States in 1933, were generally higher than market prices in the United States, they served to increase substantially the duties applicable to such imports and to curtail importations from the United States.

The actual level of duties on corrugated shipping containers prior to the United States Trade Agreement of 1938 is suggested in a letter from Consumers Glass Company, dated March 23, 1936, part of which reads as follows:—

> "Despite the fact that we have approached the carton manufacturers in a friendly way in an endeavour to work out a cheaper carton to compete with American competition, it is now quite obvious to us that the carton companies are just toying with our problems and intend to continue to take full advantage of the 50 per cent duty their industry enjoys. The exorbitant prices paid for cartons in Canada at this time is a very serious handicap to this industry and if satisfactory price arrangements cannot be arrived at between the two industries in a friendly way, we will have no other alternative but to take more drastic measures in the future." (Exhibit 118)

Mr. G. W. Brown of the Gair company was questioned on the 50 per cent duty mentioned in this letter:—

> "Q. Would their estimate of fifty per cent duty not correspond pretty closely with the estimate that was worked out in that letter from Mitchell that came to forty-six per cent on some items?—A. Pretty generally, that is correct Mr. Commissioner—forty-five to fifty per cent is the usual—it depends upon the variation in the American price if it gets low enough—as I told you, on my trip to the States, fifty per cent now. Of course that is on major tonnage business." (Evidence, p. 1174)

Imports of shipping containers and of container materials have supplied a very small part of the Canadian market for these products since 1930. In 1937 the value of all paperboard containers imported, including folding and set-up boxes as well as corrugated and fibreboard shipping containers, amounted to approximately $500,000; whereas in that year the value of these shipping containers produced in Canada amounted to nearly $11,000,000. Importations of the principal paperboard materials reached a total of only 615 tons against a domestic production for Canadian use of over 118,000 tons. The available figures for imports are shown in the following table:—

TABLE 12.—IMPORTS OF ALL TYPES OF PAPERBOARD CONTAINERS AND OF CERTAIN PAPERBOARDS, 1930-1938

Calendar Year	Containers wholly or partially manufactured from fibreboard or paperboard	Straw Paper, Test Board or Kraft Board
	$	Tons
1930	1,151,570	2,934
1931	715,007	6,008
1932	567,090	1,153
1933	358,495	625
1934	283,547	121
1935	267,152	670
1936	387,629	560
1937	509,012	615
1938	451,150	2,428 (1)

(1) The increase in 1938 was due largely, if not entirely, to importations from the United States by Shipman Boxboards, Limited, Hamilton, which was unable to secure its supplies from Canadian manufacturers.

Reports of the Dominion Bureau of Statistics have not until recently shown imports of shipping containers separately from imports of other types of paper boxes. The only records thus far available show that in the nine months ending December 31, 1938, imports of shipping containers represented approximately one-third of the total value of all paperboard containers imported. In this period imports of shipping containers amounted to 1,661 tons, valued at $124,486; whereas imports of all types of paperboard containers totalled 2,899 tons, with a value of $337,844.

Under the Canada-United States Trade Agreement of 1935 imports from the United States were admitted under the intermediate tariff. No change was made in the tariff item covering container materials, but for paperboard containers a minimum rate of duty of 30 per cent was established under the intermediate tariff for which the specific rate of duty was 1¼ cents per pound. The Trade Agreement of 1938 resulted in further reductions of duties on imports from the United States. The rate of duty on container materials was reduced from 25 per cent to 22½ per cent and on paperboard containers from 1¼ cents to 1 cent per pound with a minimum duty of 25 per cent. In addition, the special excise tax of 3 per cent was to be removed from such imports.

VI. FINANCIAL OPERATIONS OF CONTAINER MATERIALS, LIMITED TO LESSEN COMPETITION

The pooled financial resources of Container Materials, Limited, resulting from the original deposits made by member companies and the accumulation of the one per cent levy on sales, although the funds in large part are held in trust, have enabled the organization to undertake financial operations in several instances on behalf of the parties to its agreements, for the purpose of preventing the development of competition within the industry or of eliminating competition which had developed. The first instance in which the resources of the association were employed in this way occurred shortly after the formal commencement of its operations.

1. Corrugating and Container Company, Limited, Hamilton

Corrugating and Container Company, Limited, of Hamilton, had been established originally by Charles E. Marriott in 1923 for the manufacture of corrugated paper products. Mr. Marriott continued as sole owner until 1930, when some additional capital was brought in and the company was incorporated under an Ontario charter. The company was a member of the Canadian Corrugated and Fibre Box Manufacturers Association and became a member of Container Materials, Limited. It was one of the smaller members, and was given a quota of 1·10 per cent when the latter organization was formed.

The operations of Corrugating and Container Company, Limited, were unprofitable in 1931, and early in 1932 it went into bankruptcy, A. J. Hardy of the firm of Jenkins and Hardy acting as trustee. That this company was in financial difficulties had apparently become known to the industry in 1931, and at least one offer had been made for its purchase. Rather than permit the company to go into other hands, Container Materials, Limited, advanced the necessary funds to effect a compromise with the company's creditors, on the security of a second mortgage on the property, which was owned by Mr. Marriott, and the hypothecation of all the issued shares of the company. Container Materials, Limited, assumed direction of the company, with Mr. Marriott as manager.

Futher advances were made to the company and by the end of 1934, according to the evidence of Mr. Badden, the combination "had about $14,000 invested there." When questioned as to the reasons why Container Materials, Limited, should lend financial assistance to the company, Mr. Marriott said:

> "Well, I would say that they were all, or quite a few of them were, actively aware of business in Hamilton and perhaps they could not decide among themselves who should get it—it would be better, perhaps, left as it was then for someone else to take it over. That would be the natural thing to happen." (Evidence, pp. 638-9)

The arrangement is set forth in detail in a memorandum in the files of the Hinde and Dauch company, addressed to Mr. Badden, entitled "Memo. of Suggested Proposal *re* Container Materials, Corrugated Containers, Limited, and Mr. Marriott." The following advantages from the point of view of the association are cited in the memorandum:

"(1) It keeps plant in operation in area thereby reducing possibility of competing plant opening.

(2) It has everything under its own control and can shut down if not operating at a profit.
(3) It has quota of Corrugated Containers Limited available to protect itself against loss.
(4) It has plant, machinery and building as security of repayment for present advances to creditors and any further advances made for principal payments under the mortgage or liens on machinery.
(5) Probable cost to Container Materials Limited should be less than leasing plant and paying pool on quota and, assuming the figure in discussion to be reasonably accurate, might under reasonable operation in final analysis cost the Company very little and in the event of security being ample and Mr. Marriott completing the repurchase, would cost the Company nothing." (Exhibit 168)

L. F. Winchell, of the Hinde and Dauch company, while disclaiming any knowledge of the authorship of the memorandum, agreed that it set forth correctly the purpose of the transaction (Evidence, p. 1499 (*a*)).

Although under the terms of the agreement entered into by Container Materials, Limited, the association was to have the option of purchasing the shares of Corrugating and Container Company, Limited, on the same terms and conditions as any offer of purchase made for the shares by any other party, an agreement dated November 30, 1934, was completed between C. E. Marriott and Robert Gair Company, Inc., of New York, whereby the latter purchased the shares of Corrugating and Container Company, Limited. No notice of this agreement or of the negotiations leading up to it was given to Container Materials, Limited, although Mr. Marriott informed Mr. Badden, in conversation, that he intended paying the indebtedness to Container Materials, Limited. Rumours of the transaction did, however, reach the directors of Container Materials, Limited, and on December 21 Mr. Badden was instructed to approach Mr. Marriott and make him an offer. On January 24, 1935, Mr. Badden reported to the directors that he had interviewed Mr. Marriott and his solicitor and had offered, on behalf of Container Materials, Limited:

(1) To purchase the shares of Corrugating and Container Company for $25,000.00.
(2) To lease the property occupied by the company from Mr. Marriott for five years at a monthly rental of $200.00.
(3) To tender Mr. Marriott an employment contract for a five year period at an annual salary of $4,000.00. (Exhibit 4, p. 114)

This offer was approved by resolution of the directors and formally confirmed to Mr. Marriott in writing the following day (Exhibit 65). On February 12, 1935, Mr. Badden reported the purchase of Corrugating and Container company by Robert Gair Company, Inc., and was instructed to give a release of the stock upon payment of all outstanding obligations due Container Materials, Limited (Exhibit 4, p. 116). It is not clear whether or not the offer of Container Materials, Limited, was made before the members became aware of the impending purchase by Robert Gair Company, Inc. Mr. Badden stated that the offer would have been made in either case as "our idea in making that offer was following the terms of that agreement and we had the right to do that" (Evidence, p. 668).

The purchase of Corrugating and Container Company, Limited, by Robert Gair Company, Inc., resulted in this plant becoming one of the branches of Gair Company, Canada, Limited, which assumed the obligations and undertakings between its predecessor companies and Container Materials, Limited.

The activities of Container Materials, Limited, in connection with Corrugating and Container Company, Limited, give some indication of the advantages which the combination found in establishing itself as an incorporated company rather than as a voluntary trade association. It is evident that much greater difficulty would have been encountered in conducting such financial operations under a voluntary association than through the medium of an incorporated body such as Container Materials, Limited.

2. Kitchener Box Company, Kitchener, Ontario

Kitchener Paper Box Company, a member of Container Materials, Limited, went into liquidation in 1932 and the trustees called for a sale by tenders which were to be opened on May 19, 1932. On May 11, H. J. Badden sent a circular letter to members of Container Materials, Limited, giving details of the sale and stating "We shall be glad if you will please advise us if you think we should arrange to make an offer" (Exhibit 200). A. M. Dunn, vice-president and managing director of Canadian Wirebound Boxes, Limited, in his reply wrote:—

> "In view that tenders are to be in prior to May 19th, I would like to suggest that you arrange to call a quick meeting say in Toronto of six to eight of the largest Corrugated manufacturers, and get their views on what should be done. If this Group thought it advisable to put in a bid, I feel confident that it would be finally approved by the whole Group." (Exhibit 200)

There is no record in the minutes that this proposed meeting was held or that any offer was made for the Kitchener Paper Box Company. The plant was purchased by A. R. Kaufman, of Kitchener, who established a new company, Superior Box Company, Limited, whose relations with the combination are discussed in section VII of this report.

3. Building Products, Limited, and Quebec Paper Box Company

Building Products, Limited, manufacturers of roofing and insulating products and other building materials, commenced the manufacture of solid fibre shipping cases at its branch at Portneuf, Quebec, in 1928 or 1929. Its plant was the first to manufacture this type of container in the province of Quebec. The Hinde and Dauch company soon followed by commencing the manufacture of solid fibre containers at its branch plant in Montreal, which had been secured with the purchase of the Thompson and Norris Company in 1928. Solid fibre containers, as the name implies, are made from a solid sheet of layers of paperboard, in contrast to the corrugated sheet which is made up generally with a corrugating medium interposed between two sheets of paperboard. The solid fibre container is heavier than the corrugated carton and comes into more direct competition with wooden shipping cases.

When Building Products, Limited, commenced the manufacture of solid fibre containers it did not become a member of Canadian Corrugated and Fibre Box Manufacturers Association, and its activities were apparently a matter of some concern to the members of that association. On December 10, 1929, A. T. Whealy, Corrugated Paper Box Company, Limited, Toronto, in a letter to F. C. Hayes, Shipping Containers, Limited, Montreal, said, in part:—

> "Another feature which should be taken into consideration is the fact that Hinde & Dauch, apparently not being up to their pool quota of sales, are placed in the position of being able to profitably go after all the lower price business due to American competition and Building Products competition, which they are doing to the best of their ability, and with the consequent result that a great number of accounts are going to be treated as specials, and a great number of these specials are going to affect accounts which do not now have to be treated as specials." (Exhibit 226)

Before the breakdown of the price agreements of the unincorporated Association, however, Building Products, Limited, was "co-operating" in the maintenance of common prices. Mr. Badden gave evidence as follows:—

> "A. Building Products were co-operating with us at that time.
> Q. In 1929?—A. No, in December, 1930.
> Q. Were they members of your association?—A. They were in for price—they were co-operating with us at that time." (Evidence, pp. 2101-2)

The company is also shown as being represented at the meeting of the box manufacturers held on September 22, 1931, at which the price-fixing arrangements of Container Materials, Limited, were agreed upon (Exhibit 3, p. 1). The company did not become a shareholder of Container Materials, Limited,

or enter into the "purchase" and "agents" agreements (Evidence, p. 124). It did contribute to the expenses of Container Materials, Limited (Exhibit 4, p. 91A), and furnished a cash bond as a guarantee that it would maintain prices.

Building Products, Limited, was dissatisfied, according to the evidence of members, with the relationship between prices of corrugated and fibreboard boxes as they were manufacturers only of the latter. At one stage it announced that it was considering engaging in the manufacture of corrugated boxes in competition with members of Container Materials, Limited. Having been unable to obtain a satisfactory adjustment of prices in 1932, it requested the return of its deposit and a minute of a meeting of the directors of Container Materials, Limited, held on September 8, 1932, authorized this return (Exhibit 4, p. 76). In this connection, C. J. Munce, president of Hygrade Corrugated Products, Limited, London, gave evidence as follows:

> "Q. Do you remember why you opposed the motion to return the deposit?—A. They put up their deposit. They always claimed that fibreboard boxes were not sold high enough to make a profit and they were always sore and bringing it up at every meeting, and accused our agents around there of keeping the price of solid fibre products down so they couldn't make a profit—that was the bone of contention all the time Building Products were in the Association.
>
> Q. They were only manufacturing fibreboard at that time?—A. Yes.
>
> Q. Were they considering manufacturing any other type of container?—A. They threatened us with it that they would manufacture corrugated.
>
> Q. Was it brought up at meetings?—A. They threatened us with it at the meetings."
>
> (Evidence, pp. 837-8)

On this point Mr. Badden's evidence was as follows:

> "A. The reason that Building Products resigned from the arrangement was that our prices were too low.
>
> Q. Were they obliged to quote your prices?—A. No, they were not obliged to, but they continuously complained of the prices quoted and finally they got out.
>
> Q. But they could have quoted higher prices?—A. Yes, but that is the reason.
>
> Q. It isn't recorded—where did you get that information?—A. From them.
>
> Q. But it isn't recorded in the minutes?—A. No, but they came to the meeting and complained that the prices quoted were too low.
>
> Q. Do you recall those discussions?—A. I recall some discussions where their deposit was returned. We didn't object to it. If a man isn't going to work with you, you might as well turn him loose.
>
> Q. Do you remember their reasons?—A. I believe there was some complaint that the price in general was too low, and their other complaint was that corrugated sold under fibre, and there were too many accounts being taken away from them."
>
> (Evidence, pp. 1989-90)

Some form of "co-operation," however, would appear to have continued until the spring of 1933, as reference is made in the minutes of a meeting of the directors of Container Materials, Limited, held on May 12, 1933, to a letter having been received at that time from Building Products, Limited, "notifying this Company of its withdrawal from any arrangements" (Exhibit 4, p. 86).

Mr. Winchell of the Hinde and Dauch company wrote Building Products, Limited, on February 15, 1932, suggesting a conference with a view to working out some arrangement whereby Building Products would turn over its box business to the Hinde and Dauch company and in return Hinde and Dauch would purchase a corresponding tonnage of board from it (Exhibit 170). This meeting took place but Building Products were not interested (Evidence, p. 1517). Further negotiations apparently continued at the instance of Hinde and Dauch between the office of the Hinde and Dauch company in the United States and Mr. McNeil, managing director of Building Products. These were terminated by Mr. McNeil on March 17, 1933, in a letter addressed to J. H. Macleod, vice-president of the Hinde and Dauch company at Sandusky, Ohio, from which the following is taken:

> "Our company has carefully considered the whole shipping container question, and we have definitely reached the conclusion that we are not interested in any plan at this time that would discontinue the operations of our present box-making plant at Portneuf.

The very fact, however, that your company saw fit to approach our company with a proposition which was intended to be a plan which would work out to our mutual advantage causes me to feel that there may be some other plan upon which our respective companies could agree; for example, your company might be willing to discontinue making and promoting the sale of solid fibre shipping containers in this Eastern market. You may recall that at the time our company installed this box-making equipment at Portneuf exclusively for the manufacture of solid fibre shipping containers, that your company were producing this product only at Toronto. Our company, therefore, felt that there was a place in this Eastern market for a producer of solid fibre containers and acted accordingly. Your company, however soon thereafter decided to set up a competing plant at Montreal.

I am not in a position to say that our Company would give up the idea of adding corrugated shipping containers to its present operations even if your company were to favourably consider giving up the production of solid shipping containers in the Montreal, Quebec markets, but if there is any basis for negotiation along these lines, I will be only too glad to have a talk with you or Mr. Winchell, and present the matter to our Directors for further consideration." (Exhibit 170)

Discussions were resumed a year later, when Mr. McNeil of Building Products wrote Mr. Macleod of the Hinde and Dauch company, on April 30, 1934, intimating that his company contemplated establishing corrugating facilities at Portneuf and asking quotations on any surplus corrugating machinery the Hinde and Dauch company might have either in the United States or Canada. On May 3, Mr. Macleod replied to the effect that, as far as their United States plants were concerned, all machinery was in use but that his letter was being forwarded to Mr. Winchell, who would write him regarding the situation in the Canadian plants. As to the proposed corrugating plant at Portneuf, Mr. Macleod wrote:

"I personally am sorry to learn that you are contemplating establishing corrugated facilities at Portneuf. In view of the already extremely large excess capacity in the industry in Canada, your move does not seem justifiable from the standpoint of any economic need. Having told you frankly last year of your extremely low prices in comparison with the established market for solid fibre boxes, I hope you will co-operate with the corrugated manufacturers in Montreal, should you consummate your present plan of establishing corrugated facilities near Quebec City." (Exhibit 170)

On the same day Mr. Macleod wrote from Sandusky to C. H. Andrews of Bird and Son, Inc., East Walpole, Massachusetts, the parent company of Building Products, Limited, as follows:

"Please note attached copy of letter to Mr. McNeil, in which I frankly mention their lack of co-operation in Montreal. I hope you or Mr. Allen can exert some control over this new undertaking at Quebec City, as otherwise, the same merchandising methods in corrugated as you have used in solid fibre will have a destructive effect on the market in Montreal, and will result ultimately in your lower prices being met.

If your people, however, would join the shipping box association in Canada, I am sure you would be well received and would enjoy the benefit of all-around co-operation, as against trying to build up business alone via low prices." (Exhibit 170)

When it became evident in 1934 that Building Products, Limited, was in earnest in its proposals to go into the corrugated box industry, Mr. Winchell of the Hinde and Dauch company wrote to the secretary of Container Materials, Limited, on May 17, 1934, as follows:

"When Mr. Frohman was here last week, we talked over the Building Products' matter, and, from information he gets on the other side, it seems almost a probability that they will develop into corrugators presently.

We have an old Raephel corrugator at Montreal and a Swift here at Toronto, and Mr. Frohman wondered, if they were definitely going to buy, if it would not be a good idea for us to sell them one of these units, rather than have them bring in additional equipment from the other side. They have been in touch with some available used equipment on the other side, possibly some from their parent plant at East Walpole, and it is not unlikely that they will go or have gone direct to manufacturers of new equipment.

What would be your counsel in this matter. Naturally, we do not want them to start and do not want to be of any aid to them in getting started, but would it be a good idea to lessen the equipment of Canada by making this transfer?" (Exhibit 168)

That competition from Building Products, Limited, during the summer of 1934 was a matter of concern to the members of Container Materials, Limited, or at least to Shipping Containers, Limited, is indicated in the letter of Mr. Hayes of the latter firm to Mr. Badden on August 14, which reads in part as follows:

> "First of all I assume the question of competition from Building Products will be thoroughly discussed. The Catelli Macaroni Company have already placed an order with this firm for several thousand 60 point 40 lb. cartons. I understand that the price is considerably under our present corrugated price. I further understand that if these boxes are satisfactory, and unfortunately I feel they will be, that they are going to adopt them as their standard box. This same thing applies to the Saxonia Company, but also would like to bring up the question as to competition from the 40 point fibre box the price of which is outside of the Association. You will recall that we made application sometime ago for the privilege of supplying a corrugated box made with 5 point liners, and to sell at any price we desire, but the matter was not settled."
> (Exhibit 219)

Mr. Hayes pursued the matter further in another letter to Mr. Badden the following day in which he suggested how this competition might be met:

> "Confirming telephone conversation of yesterday we wish to inform you that after a long session with both the American and Canadian Representatives of the Eddy Match Company, we were able to receive the information, but the new price on our Match Cartons was higher than that being quoted by Building Products, Limited. We have been experimenting for the past few days with Bliss Boxes similar to that used in the United States details of which we wrote you a few days ago. If the Bliss Box was figured on the Sheet Table, which we feel would be quite in order, or if the Bliss decimal itself is more in line with the square feet used, we would be able to sell this account at tariff and under Building Product prices. We are making application to the Bureau of Explosives and the Railway Board of Canada for authority to use this type of carton, and while we expect no difficulty, it may take several weeks to get it authorized. In the meantime we find that it will be necessary in order to hold this account to sell cartons at the old price as we do not feel it would be wise to turn this account over to Building Products unless we found it unable to meet competition. We are turning this information over to you to be acted upon at the next meeting.
>
> Until I have had a chance to have a personal conversation with you, kindly keep this matter confidential."
> (Exhibit 219)

This correspondence is quoted as indicative of the attitude of members of the combination toward the appearance of independent price competition in the industry. The quotations of lower prices by Building Products, Limited, represented the only price competition with which the organized group was faced in this territory. The steps taken to eliminate this competition are described in later correspondence and in the minutes of Container Materials, Limited. These records disclose that it was decided to offer Building Products a substantial sum for the machinery in its plant used for the manufacture of shipping containers on condition that it would refrain from manufacturing or selling shipping cases for a period of seven years. The proposal is referred to in a letter written by Mr. Hayes, of Shipping Containers, Limited, Montreal, to Mr. Badden on November 27, 1934:

> "Relative to our conversation of November 23rd, the matter of Building Products Limited has been placed in front of our Board, and the principle of making them an offer of $90,000 as outlined by you has met with approval."
> (Exhibit 219)

No reference to the negotiations which led up to this transaction is to be found in the minute book of Container Materials, Limited, nor in any other records produced in the investigation, until the minutes of a meeting of the directors of Container Materials, Limited, held on December 4, 1934, a meeting apparently called for the purpose of considering this matter only, as no other business is reported:

> "Moved by Mr. L. F. Winchell, seconded by Mr. C. N. Moisan and unanimously carried that the officers of the company are hereby authorized to submit the attached offer for the purchase of Building Products Limited box business.
>
> Moved by Mr. Geo. W. Brown, seconded by Mr. H. Martin, and unanimously carried that the officers of the company are hereby authorizer to submit the attached

> sents, authorizes Container Materials Limited, to use the necessary proportion of that company's funds held in trust by Container Materials Limited to finance this purchase." (Exhibit 4, p. 103)

The following is a brief summary of the offer to purchase:

1. *Purchase Price:*
   (*a*) For goodwill, $30,000;
   (*b*) For plant, machinery and equipment, *vendor's original purchase price,* not to exceed $50,000;
   (*c*) For inventory, including dies, vendor's cost price, not to exceed $10,000;
   (*d*) Purchase price to be paid in 3 equal instalments spread over 36 months, without interest, secured by deposit of $90,000 with Trust Company.

2. *Property to be purchased:*
   (*a*) Goodwill.
   (*b*) All patents, trade marks, etc., relating to the manufacture or sale of boxes or shipping containers.
   (*c*) All machinery, dies, etc., used in the manufacture of boxes and shipping containers.
   (*d*) All materials and boxes manufactured or in process of manufacture.
   (*e*) All advertising matter and materials.

3. *Restrictions as to Manufacture or Sale:*
   Vendor to refrain from the manufacture or sale of solid fibre, corrugated or cardboard boxes, or material for the manufacture of such boxes, within Canada for period of seven years. (Exhibit 4, pp. 104-7)

The minutes of a meeting of the directors of Container Materials, Limited, on December 21, 1934, authorized the completion of the purchase for approximately $86,000 (Exhibit 4, p. 108), and on January 24, 1935, the secretary reported that the transaction would be completed on February 12, 1935, and was authorized to hold an auction sale of the equipment and machinery among the agents of the Company in Montreal on that date (Exhibit 4, p. 113).

The agreement between Building Products, Limited, and Container Materials, Limited, dated January 9, 1935 (Exhibit 288), differed only slightly from the offer to purchase outlined above. The purchase price was put at $80,000 and a maximum of $6,000 for inventory. The payments were to be completed by December 31, 1936. The period for which Building Products, Limited, agreed not to manufacture or sell shipping cases was set at five years, with a proviso that in the event of the sale of the Portneuf plant within three years a stipulation would be made that the buyer should not manufacture or sell shipping cases until the expiry of the three-year period.

The purchase of equipment from the Quebec Paper Box Company in 1934 had the effect of removing the only other potential competition which appeared likely to give concern to members of Container Materials operating in the province of Quebec. Quebec Paper Box Company was engaged in the manufacture of folding and set-up boxes in the city of Quebec and had machinery which would have enabled it to make corrugated boxes. An offer was made by Container Materials, Limited, for the purchase of this machinery and on December 21, 1934, its purchase for the sum of $2,746.04 was approved by the directors (Exhibit 4, p. 108).

The two lots of machinery secured from Building Products, Limited, and the Quebec Paper Box Company, for which the group paid a total of over $80,000, realized $5,655 when it was put up for auction among the members of Container Materials, Limited, on February 12, 1935 (Exhibit 4, p. 116). These transactions were summarized as follows in the annual report of the auditors of Container Materials, Limited, for the year ended December 31, 1935:—

> "The Company purchased and sold the corrugated box business of Building Products, Limited, and Quebec Paper Box Co. Ltd. at a net cost of $78,839.47. To finance this, with the approval of the shareholders, Trust funds were used and are being replaced by monthly payments by shareholders over a period of three years ending December 31, 1937." (Exhibit 4, p. 128)

Several witnesses indicated that, although they had not found the competition of Building Products, Limited, to be of importance in their territory, they approved of the policy of using such means to prevent the development of competition. A. T. Whealy of the Corrugated Box company, of Toronto, gave the following evidence:—

> "Q. Was there any advantage that your company derived from the purchase of Building Products, Limited?—A. I suppose the advantage we would derive out of it would be the elimination of another firm.
>
> Q. From competition with you?—A. He might or might not be in competition."
>
> (Evidence, p. 587)

When questioned further as to what his company gained through contributing to the purchase of the two businesses, he said, "My answer to that question is that I haven't the faintest idea of what return we got for it" (Evidence, p. 588). C. E. Marriott of the former Corrugating and Container Company, Limited, at first stated that his reason for approving the deal was, "It didn't affect us at all and we had no reason to obstruct the purchase" (Evidence, p. 663), but he later added:—

> "I told you a minute ago that we didn't get any benefit, but we were probably looking for benefit and subsequently, probably, got benefit by being able to manufacture boxes for their branch in Hamilton—Building Products' branch in Hamilton."
>
> (Evidence, p. 664)

C. J. Munce, of Hygrade Corrugated Products, Limited, London, believed that his approval of the purchases indicated that he thought it was worth the price paid to be rid of the competition of Building Products, Limited. He was asked:—

> "Q. . . . the amount agreed on for purchase was 86,000 dollars and your company agreed to pay its proportion which would, on your percentage basis, amount to roughly seventy-three hundred dollars. Would you consider that it was worth seventy-three hundred dollars to get rid of the Building Products Limited competition in your vicinity?—A. That must have been my thought or I would not have been in favour of it."
>
> (Evidence, p. 840)

The nature of these transactions by Container Materials, Limited, is sufficiently indicated by the foregoing to require no elaboration. The joint resources of practically all the manufacturers in the shipping container industry were used to eliminate a competitor whose activities affected only some of the firms associated in Container Materials, Limited. The cost of removing such competition was borne by all the quota members of the combination inasmuch as the operating results of the group showed profits subsequently, the cost of the elimination of this competitor was actually included in the prices which were charged for the products of the industry.

4. O. and S. Corrugated Products Company, Toronto

The entrance of O. and S. Corrugated Products Company into the corrugated paper box field in 1936 gave rise to immediate action on the part of members of Container Materials, Limited.

This company is a registered partnership formed by agreement dated August 19, 1935. The members of this firm, a family partnership, comprise the officers and directors and are the only common shareholders of Acme Paper Box Company, Limited, with head office in Toronto, manufacturers of folding and set-up boxes and other paper products. Under another agreement of August 19, 1935, between Acme Paper Box Company, Limited, and the partnership, the Acme Company, as trustee for the partnership, undertook to set up a corrugated paper box plant by purchasing the necessary machinery and to conduct the manufacture and sale of the corrugated paper products. Shortly after the execution of these agreements Acme Paper Box Company, Limited, purchased necessary machinery which was installed toward the end of 1935. The first sale of corrugated boxes was made on February 14, 1936.

No mention is made in the minutes of either directors' or agents' meetings of Container Materials, Limited, prior to April 29, 1936, of any discussion in regard to the new enterprise, but among the items listed for discussion in the agenda for meetings on February 4 and March 18 are "Report on new prospective Corrugated Box Manufacturers" and "Report in reference to new and prospective corrugated box manufacturing companies." Discussions had been commenced, however, between Container Materials, Limited, and Acme Paper Box Company, Limited, with a view to an arrangement whereby the new company would maintain the prices fixed by the combination in return for a guarantee of substantial compensation. The substance of this guarantee is contained in a letter which H. J. Badden wrote to J. I. Oelbaum on March 6, 1936, as follows:—

"We understand from our discussion on the third instant, that the following covers the basis of agreement which would be satisfactory and acceptable to you.

1. The Agreement would provide that in the event of your sales in the nine months ending December 31, 1936, being less than $150.000, and in the year 1937 being less than $200,000, that you would be compensated in each period at the rate of 20 per cent on the difference between your actual sales and the above figures. Should your sales, however, in either period be over the above amounts, there would be no compensation for that period.

2. Should the current selling prices be either increased or reduced, the figures of $150,000 and $200,000, would be either increased or decreased according to the percentage of advance or decline in selling prices, e.g. if on January 1, 1937, there was a reduction of 10 per cent in the present selling prices, then the amount for 1937 would be reduced to $180,000 instead of $200.000, or if the selling prices increased 10 per cent, at that time, the amount would be $220,000 instead of $200,000.

3. Any amount due under the above guarantee as at December 31, 1936, would be payable with interest calculated from December 31, 1936, in six equal monthly instalments commencing February 1, 1937. Any amount due for the year 1937 would be payable in full on February 1, 1938.

4. A deposit of $35.000 would be made with a duly appointed agent, to guarantee the above payments. This amount to remain in the hands of the duly appointed agent until December 31, 1936. Commencing January 1, 1937, the deposit required would be $20,000, after provision is made for any payments that may be due to you on shortage of sales for the nine months ending December 31, 1936.

5. The Acme Paper Box Company, Limited, to agree to deposit $5,000 with a duly appointed agent. This deposit to be considered as a guarantee that you will maintain established prices, terms and conditions, and abide by all rules and regulations.

6. You agree to pay promptly any penalties that may be imposed for your failure to maintain the established prices, terms and conditions.

7. You agree to pay your share of all expenses based on sales.

8. In case of complaint that you have not maintained the established prices, terms and conditions, your books and records are to be open for examination, and also an audit is to be made to verify the actual sales figures in each of the periods in which the guarantee applies.

We would appreciate if you will please advise us at your early convenience if the above fully sets out your understanding, so that we may present it to our clients for their consideration." (Exhibit 74)

An agreement embodying this arrangement was executed under date of April 1, 1936, between the Acme company and Container Materials, Limited, the latter depositing $35,000 with the Chartered Trust and Executor Company and the former $5,000 with Messrs. Hardy and Badden (Exhibit 72). The completion of the agreement on behalf of Container Materials, Limited, and the use of shareholders' funds held in trust were authorized by the directors at a meeting held on April 29, 1936 (Exhibit 4, p. 134). The agreement was subsequently transferred from Acme Paper Box Company, Limited, to the O. and S. Corrugated Products Company, as recorded in the minutes of October 22, 1936. An agreement dated December 31, 1937, to which the partnership was a party, extended the arrangement until April 30, 1938 (Exhibit

72). In June, 1938, J. I. Oelbaum gave evidence in this inquiry that negotiations for a further extension had been in progress "when the inquiry came up" (Evidence, p. 730), and that his firm was still maintaining the prices as set by Container Materials, Limited (Evidence pp. 764-5). A resolution recorded in the minutes of a meeting of directors of Container Materials, Limited, on December 15, 1938, authorized the president "to make an agreement with O. and S. Corrugated Products Company with maximum payments not to exceed $20,000 and a minimum payment of $15,000 provided their sales are less than $200,000 per annum." Mr. Badden stated on January 5, 1939, that a further agreement had not yet been concluded (Evidence, p. 2592).

Mr. J. I. Oelbaum, who carried on the negotiations on behalf of the O. and S. company in 1936, was unable to recall at the inquiry by whom they were opened but denied any thought of entering into an agreement with Container Materials, Limited, when the partnership was formed. He stated that discussions had been in progress for a week or two prior to March 6, 1938, the date of Mr. Badden's letter. (Evidence, pp. 737, 740-1)

The situation in which O. and S. Corrugated Products Company was placed under the agreement is indicated by the following provisions:

> "14. The Party of the Second Part shall retain its plant and equipment intact under its sole and exclusive control and shall not rent, lease or permit the use by any other person, firm or corporation of all or any part thereof. . . ."
>
> "16. It is further understood and agreed that the Party of the Second Part is under no obligation to manufacture or sell any corrugated and/or solid fibre board products during the currency of this agreement or any part thereof." (Exhibit 72)

It will be seen from the above that the O. and S. company was not obligated to produce any corrugated or fibreboard products at all to be entitled to receive compensation. If it produced nothing, Container Materials, Limited, was bound to pay to the company $30,000[1] for the period April 1 to December 31, 1936, and $42,133[2] for the twelve months ending December 31, 1937. These possible payments must be viewed in the light of the evidence that the machinery installed in the plant of the O. and S. Corrugated Products Company cost only $28,120.20, and that the only item of expense definitely fixed was rent of $400 per month to Acme Paper Box Company, Limited, in which the O. and S. partners held all the common stock. The payments that were actually made by Container Materials, Limited, to the O. and S. company for the nine-months period in 1936 were almost enough to recoup the latter firm for its total outlay for machinery. In that period the O. and S. company received from Container Materials, Limited, substantially more than it received for the sale of its goods; the payment from the combination was $26,128.96, while the total sales amounted to only $19,481.02. By April 30, 1938, so-called compensation under the agreement amounted to $69,690.24 and sales to $82,-563.52. In other words for every dollar of its sales the O. and S. company received approximately an additional 85 cents from the members of Container Materials, Limited.

It is scarcely necessary to point out that the O. and S. company found it much more profitable *not* to manufacture than to produce boxes and find a sale for them. The effect of the agreement upon the company's sales is reflected in the following month-to-month record of sales in 1936. In the one full month of March in which the company was not operating under the agreement its sales amounted to $16,220.85. When the agreement came into effect on April 1 their sales for that month dropped to $4,441.30.

---

(1) 20 per cent of $150,000.

(2) 20 per cent of $210,666.67. This represents the increase over $200,000 by reason of an advance in prices of corrugated boxes during the year.

SALES OF O. AND S. CORRUGATED PRODUCTS COMPANY
MARCH 1 TO DECEMBER 31, 1936

March	$16,220.85
April	4,441.30
May	2,935.13
June	2,440.25
July (1)	—
August	1,594.64
September	2,020.04
October	1,255.15
November	2,199.16
December	2,595.35
Total	$35,701.87

(1) No sales reported for July, 1936.

Total sales for the year 1937 amounted to $46,802.54 and for the first four months of 1938, to $16,279.96. Shown in summary form the record of sales and " compensation " of the O. and S. company from the inception of the partnership to April 30, 1938, is as follows:—

—	Sales		Amounts received from Container Materials, Limited	
Before agreement—				
Feb. 14 to 29, 1936	$ 1,550.04			
March, 1936	16,220.85			
		$17,770.89		
After agreement—				
April 1 to Dec. 31, 1936	19,481.02		$26,128.96	
Jan. 1 to Dec. 31, 1937	46,802.54		32,772.82	
Jan. 1 to April 30, 1938	16,279.96		10,788.46	
		$82,563.52		$69,690.24

(Exhibit 74; Evidence, p. 748)

The method of " stabilizing the market " represented by the payment to possible competitors to refrain from competing can only be pursued in an industry where a substantial element of monopoly is present. In any industry in which producers were in competition with each other no group could " buy off " possible competitors in the expectation that the return from their operations would be sufficient to cover the payment of such compensation. But in the case of O. and S. Corrugated Products Company, as in those of Building Products, Limited, and the Quebec Paper Box Company, the prices fixed by Container Materials, Limited, were sufficient to yield profits over and above the charges imposed upon member companies to meet the payments required by the agreements. What these companies were seeking to secure by concerted action in all of these transactions was the suppression of competition.

VII. OTHER MANUFACTURERS OF SHIPPING CONTAINERS ASSOCIATED WITH CONTAINER MATERIALS, LIMITED

All but three of the companies actively engaged in the manufacture of corrugated and solid fibre boxes in Canada in 1931 entered the combination as the original shareholders of Container Materials, Limited. Hilton Brothers, Limited, of Winnipeg, as a wholly-owned subsidiary of The Corrugated Paper Box Company, Limited, Toronto, is considered as part of one of the shareholding companies. The three companies which did not become shareholders were Building Products, Limited, Wilson Box and Lumber Company, Limited, and Maritime Paper Products, Limited. The relations of Building Products, Limited, with Container Materials, Limited, have already been discussed. Wilson Box and Lumber Company, Limited, and Maritime Paper Products, Limited, as has already been shown, were members of Container Materials, Limited, from its inception in all respects save that of accepting quotas and becoming holders of shares of stock of the incorporated association.

Every manufacturer of shipping containers in Canada was therefore associated with Container Materials, Limited, when it was established in 1931, and was a party to its agreements to maintain prices and to adhere to other trade restrictions. Since 1931 other manufacturing companies have entered the industry, and the relationship of each of these to Container Materials, Limited, is described in the present section.

1. Superior Box Company, Limited, Kitchener, Ontario

The first change in the membership of Container Materials, Limited, was occasioned by the bankruptcy of the Kitchener Paper Box Company in 1932. Consideration was given by members of Container Materials, Limited, to a proposal to make an offer to purchase the business, but no record was found of any action being taken on this proposal. The assets of Kitchener Paper Box Company were taken over by the Superior Box Company, Limited, a company incorporated under provincial charter on May 27, 1932, by A. R. Kaufman, of the Kaufman Rubber Company, Limited, Kitchener. The Superior Box Company, Limited, continued the manufacture of corrugated containers as well as set-up and folding boxes.

The Superior company did not become a shareholder in Container Materials, Limited, but it did undertake to maintain the prices fixed by the combination. Announcement to this effect was made by Mr. Badden to the members through a circular letter of May 20, 1932, the day following the purchase of the Kitchener Paper Box equipment by Mr. Kaufman. According to Mr. Badden's letter, Mr. Kaufman had

> ". . . agreed for the time being to maintain all prices, terms and conditions and will communicate with us again as to what his future policy will be." (Exhibit 200)

It is clear from the documentary and oral evidence that Superior Box Company, Limited, continued to follow the policy indicated in Mr Badden's letter. The only change between the position previously held by Kitchener Paper Box Company and that taken by the Superior Box company is that the latter has not entered into any written agreement with Container Materials, Limited, accepted a quota or furnished a bond to guarantee the maintenance of prices. In all other respects the company has complied with the conditions of membership in the group. The extent to which Mr. Kaufman was committed to the policies of the combination is further shown by a letter written by him in February, 1934, which is quoted at page 65 of this report.

The Superior Box company since its formation in 1932 has maintained prices and standards fixed by Container Materials, Limited, submitted to the imposition of penalties for infractions of regulations, contributed to the expenses of the combination, including those occasioned by payments made to the O. and S. Corrugated Products Company. The Superior company has also applied to the officers of the group for approval of new sales representatives of the company, has filed its monthly reports of sales, and has furnished Jenkins and Hardy with data required by them for their cost surveys of the industry (Exhibits 49, 4, and 78, and Evidence, pp. 901-2, and 906). The substitution of the Superior Box company for the Kitchener Paper Box Company cannot be said, therefore, to have caused any weakening in the all-embracing agreement to maintain the prices fixed by the organization.

In British Columbia, Pacific Mills, Limited, commenced the manufacture of solid fibre shipping cases in 1933. The products of this plant did not include corrugated boxes. Pacific Mills did not join the association but did agree to work with Canadian Boxes, Limited, which was the only British Columbia member of the association, indeed the only other manufacturer of shipping containers in the province. It gave assurance that it would maintain prices generally in British Columbia and the Prairie Provinces, reserving only the right to set its own prices for certain special accounts. Arrangements existing in 1933 were referred to in corespondence between Martin Paper Products, Limited, of Winnipeg, and Container Materials, Limited, which forms part of Exhibit 278. In 1935, Canadian Boxes, Limited, of Vancouver, reported to the secretary of the combination, in a letter of May 7, 1935, that the Pacific Mills company was working with them 100 per cent. The following paragraphs are quoted from this letter:

> "Pacific Mills Limited are working with us 100 per cent and retaining price schedules, decimals of which you already have as laid down in the first instance. As we also informed you they intend keeping the Salmon and Sugar accounts 100 per cent; and it was for this business they put in their solid fibre plant, and on fish and Sugar accounts they reserve the right to make their own prices, as these two accounts do not conflict with us.
>
> Their prices to the Sugar Refinery and the Salmon Packers are based on wooden box prices, and any interference on our part would be resented and would lead to nowhere. We can also assure you from what we know of Pacific Mills Limited that any attempt on the part of Eastern manufacturers to interfere with the two accounts in question would only lead to retaliation on the part of Pacific Mills Limited, which would have a disastrous and an undesirable effect on the Eastern prices of solid fibre."
>
> (Exhibit 283)

The continuance of this relationship with the Pacific Mills company is indicated in another letter written by Canadian Boxes, Limited, on December 7, 1936:

> "As you are no doubt aware, our friends Pacific Mills Limited are working under an agreement with us, and have, you must admit, handled the situation very nicely, and to say the least they are not at all pleased with the way things are looking. As a matter of fact there is quite a little dissatisfaction developing, especially when our friends Hinde and Dauch not only invaded Canadian Canners, but also the salmon business, and sold one of Pacific Mills' customers.
>
> Now to come to the point, our position is this: we have during the past few years been selling less and less in Alberta and confining our sales more to British Columbia, and we have come to the decision that we are not going to allow them to cut into that limited market without doing something about it. Therefore, we are going to make certain demands. The first important one that we will insist on is that Teese & Persse be eliminated, as they being brokers, it is impossible to control them as long as they enter into this business. After we hear from you on this point, we will outline our suggestions to overcome the difficulties and keep the association together; for unless this matter is definitely settled to our satisfaction we will withdraw from the Association at the expiration of our agreement and also notify Pacific Mills that they are free to act immediately as they see fit."
>
> (Exhibit 283)

Both Building Products, Limited, and Pacific Mills, Limited, confined their production to solid fibre shipping cases. In 1932 corrugated boxes, the principal type of container, were produced only by manufacturers who were parties to the agreement to maintain prices. This situation prevailed until the spring of 1933 when a new firm in Hamilton, known as Crest Carton Company, commenced the manufacture of corrugated boxes.

2. G. W. Hendershot Corrugated Paper Company, Limited, Hamilton

Crest Carton Company was a partnership formed in 1933 by G. W. Hendershot and others to engage in the manufacture of corrugated cartons. Mr. Hendershot had been for some years interested in the manufacture of corrugated products, other than cartons, through the firm of G. W. Hendershot Corrugated Paper Company. After a brief period of operations which did not prove profitable, Mr. Hendershot arranged to buy out the other partners in Crest Carton Company and to combine the corrugated carton business with the operations of G. W. Hendershot Corrugated Paper Company. This was completed in 1933 and G. W. Hendershot Corrugated Paper Company operated until 1937, when the business was taken over by G. W. Hendershot Corrugated Paper Company, Limited.

Entrance of the Hendershot company into the corrugated box field called for consideration on the part of the combination, as the prices charged by the new company were generally lower than those fixed by Container Materials, Limited.

This first appearance of price competition after September, 1931, when the new price agreement was established, was brought to the attention of the members of Container Materials, Limited, in a letter to the secretary dated April 12, 1933, from Corrugating and Container Company, Limited, Hamilton:

> "There have been rumours for some time about a new corrugating box plant being located in Hamilton and we have today received some definte information.
>
> This plant is being operated by Gordon W. Hendershot, whom we believe is backed by Reid Press, under the name of Crest Corrugated Cartons and they are now becoming more active.
>
> Mr. Littlejohn was in this office today and has run into two or three instances of their operation and the writer has also crossed with this new opposition.
>
> We thought it advisable to draw this matter to your attention now, so that something should be done at once rather than let it gather momentum." (Exhibit 66)

References to Crest Carton Company appear on the agenda of various meetings of the combination throughout 1933 and 1934, but no mention is made in the minutes of the discussions which took place.

Mr. A. M. Dunn, managing director of Canadian Wirebound Boxes, Limited, became active in an effort to have the paper mills charge a differential price for paperboard sold to the Hendershot company. He considered he had been successful early in 1934 in securing an agreement among the principal suppliers of paperboard that they would charge the Hendershot company $10 a ton above prevailing prices for its supplies. One mill, however, failed to pursue this policy and the scheme was abandoned, although Hinde and Dauch Paper Company of Canada, Limited, had invoiced the Hendershot company at the higher price on several orders. The excess charges were subsequently refunded, on August 30, 1934. On this same date Mr. Dunn had written to the Brompton Pulp and Paper Company, Limited.

> "I wish to confirm the phone conversation I had with your Mr. Scowen on August 23, at which time I advised him that the Dominion Boxboard Company had sold liners to Hendershot of Hamilton at the market price, and in face of the arrangements they had with some of the board mills.
>
> I advised Mr. Scowen that I had washed my hands of having anything to do with this matter, and it is entirely up to you to handle the matter as you see fit." (Exhibit 202)

Mr. J. F. Patton of the Brompton company replied to this letter on September 8, 1934:—

"On my return this morning from a week's holiday I have your favour of August 30 and am obliged for what you write about Hendershot.

I am surprised that certain of our friends saw fit to go in there, contrary to understanding and without first giving notification, but those things will occur under certain pressure. In addition to cutting the price I understand our opposition is giving them terms so we do not know where we stand with the account but again wish to thank you for writing us." (Exhibit 202)

While Mr. Dunn was attempting to effect an arrangement between the board mills, efforts were being made by others associated with Container Materials, Limited, to have the Hendershot company enter into some agreement to maintain Container Materials prices. Prospects for such an agreement appeared promising to A. R. Kaufman, president of Superior Box Company, Limited, Kitchener, when he wrote to Container Materials, Limited, on February 20, 1934:—

"Mr. G. W. Hendershot and Mr. H. S. Marrel of Hamilton are in my office. We discussed a corrugated pool, etc., and believe we are in similar positions in relation to the corrugated pool. You can verify this information direct, but I have the assurance of the above gentlemen that they are willing with the Superior Box Co. to sign a pool agreement similar in all respects to the other agreements except the clause in regard to quota which should be deleted. These gentlemen assure me that they are willing to co-operate in every respect if given an opportunity to do so.

Mr. Ira Good will be in Toronto possibly on the 26th to see you prior to your next corrugated meeting of the 28th.

Yours truly,

(Sgd.) A. R. KAUFMAN.

P.S.—I am informed that the Hendershot Corrugated Paper Co. has some existing contracts for corrugated cases taken at prices as close to the pool prices as they could be figured without full information regarding the basis, etc. The Company is willing to have all its contract prices checked, and table those that are not strictly in harmony with pool prices." (Exhibit 67)

In spite of this forecast no record has been found of any definite agreement having been made with the Hendershot company at this time. Over a year later one of the members of Container Materials, Limited, wrote of the difficulty which might arise with a particular account which had been quoted lower prices by the Hendershot company, "in the event that the present prices given by the outside manufacturer are brought up to standard rates, either directly or indirectly, as the result of efforts made by other manufacturers" (Exhibit 138). This letter, dated July 6, 1935, from R. L. Stephenson, general manager of London Shipping Containers, Limited, to Container Materials, Limited, contained a request that it should be permitted to meet the prices of the Hendershot company on this particular account. Such permission to depart from established prices was not granted, but efforts were continued to secure an agreement from the Hendershot company, as the following correspondence indicates. Mr. T. E. Lloyd, of the Hinde and Dauch company, wrote on July 5, 1935, to Brompton Pulp and Paper Company, Limited:—

"Just a line to advise you that I made an appointment yesterday on the telephone with Mr. Hendershot and Mr. Merrill, and they met Mr. Badden and me this morning.

We had a very frank discussion with them, and think that a satisfactory solution will be arrived at by next Tuesday, when they will give us their final answer. I will advise you further at that time." (Exhibit 263)

This was followed by a letter dated July 12:—

"Mr. DeCarteret was in the office yesterday afternoon, for a few minutes, and I promised to drop a line to you to-day if there were any new developments regarding Hamilton.

They promised us definitely we would hear not later than Tuesday of this week, and not hearing by Wednesday, we telephoned them again, and they promised then definitely we would receive a letter Friday of what they were prepared to do, but this has not

reached Mr. Badden to date. In the meantime, Mr. Badden has called a meeting for next Wednesday of the corrugators to discuss the situation, so we will have to follow up with Hamilton not later than Monday. In the meantime, I will keep you posted of any new developments." (Exhibit 263)

Three days later Mr. Badden wrote to the Brompton company stating that an offer to sell had been made by the Hendershot company. With this letter was enclosed a copy of a letter dated July 12 from the Hendershot company as follows:—

"We have given every consideration to your idea of joining the association and have still to be convinced that it is not best for all concerned to have one independent in the business as a deterrant to others who may be contemplating starting a plant. This we know has been the case in more than one instance.

We would be only too glad to agree to quote the association price on all new business if you were to tell us how we may obtain these prices.

We are open to constructive negotiation to obtain a desirable arrangement." (Exhibit 263)

The minutes of Shipping Containers, Limited, for July 25, 1935, record:—

"Mr. Long and Mr. Hayes also reported on the last meeting held in Toronto, July 17, to the effect that a committee of five had been appointed to work with Mr. Badden to see if something could be done to bring Crest into the Association." (Exhibit 223)

Complete success of this endeavour was deferred until October 22, 1936, when at a meeting of Container Materials, Limited, Mr. Badden outlined the basis on which an agreement might be made. The following account of this meeting is taken from a memorandum secured from the records of the Gair company:—

"The next subject was probably the most contentious of the meeting in which was brought up the probable additions of Hendershot, Kraft Containers and Dominion Corrugated Paper Companies. Badden was of the opinion that he could get to join the group, all three of these firms, but if anyone stayed out it was impossible to get the other two. The proposition was put right up to Munce and Littlejohn and they stated their willingness to maintain prices and live up to the letter of the agreement in every way with the exception of putting up any money which they admitted at the present moment, not to have on hand.

After considerable discussing it was decided to accept them as members on this basis and also to accept Hendershot and Dominion Corrugated Company on the same basis. This whole matter was left for the secretary to follow through and there should be something definite by the next meeting." (Exhibit 118)

Mr. G. W. Hendershot stated in evidence that his company became definitely associated with Container Materials, Limited, in November, 1936 (Evidence, p. 694). The sales of his company in that year amounted to approximately \$440,000 or 4·5 per cent of the total sales of corrugated and fibre shipping containers in Canada.

Although the Hendershot company agreed to abide by the prices and terms of sale set by Container Materials, Limited, it was obliged to continue supplying certain customers at the lower prices established under contracts the firm had made prior to November, 1936. Mr. Hendershot testified that approximately 75 per cent of the sales of his company were made under contracts. An examination of the sales figures for 1937 reveals that slightly over 85 per cent of the total sales in that year were made to seventeen contract customers, of which six accounted for more than 70 per cent of the total. The contracts run for a period from one to six years and provision is made generally for renewal at the option of the purchaser. The prices under the contracts are set generally at a discount from the prevailing prices of the Gair company and the Hinde and Dauch company, which under present conditions means a discount from the prices set by Container Materials, Limited.

As the six principal contracts account for such a large proportion of the business of the Hendershot company, their main provisions may be considered

further. Three contracts, including the largest account, run for a period of six years from January 2, 1936, and are renewable for a period of five years with option for further renewal. The prices in the six contracts provide for discounts ranging from 4 to 7 per cent from prevailing prices of the two largest Canadian box manufacturers. The reduction is given in the form of a cash discount for payment in 10 or 15 days. In addition, four contracts provide for quantity discounts on approximately the same terms as those established by Container Materials, Limited. These contracts provide that no machine or set-up charge is to be added, while in two others such charges are not to be added on orders of 2,000 boxes or more. The delivery period in these contracts, when stipulated, is set at sixty or ninety days, applying on carload orders. Under the regulations of Container Materials, Limited, quantity discounts apply only when delivery is made within seven days.

The operations of the Hendershot company have proved decidedly profitable in each year since the business of Crest Carton Company was taken over. Though the company increased its wage rates substantially in 1937, net profits and executive salaries in 1937, amounting to $49,904, were practically the same as the earnings of the partnership in 1936, which amounted to $50,794.

3. Kraft Containers, Limited, Hamilton

Kraft Containers, Limited, of Hamilton, incorporated under provincial charter on March 28, 1936, commenced the manufacture of corrugated boxes in July of that year. The principal shareholder in Kraft Containers, Limited, C. J. Munce, holds no office in the company. Mr. Munce has for some years been president of Hygrade Corrugated Products, Limited, of London, and is financially interested in Canadian Boxes, Limited, of Vancouver. The president and general manager of Kraft Containers, Limited, H. S. Litteljohn, was sales manager of Hygrade Corrugated Products, Limited, prior to the formation of the new company. Both Munce and Litteljohn stated in evidence that no financial relationship exists between the two companies except for the common interests of C. J. Munce, who, however, stated that he now holds only a qualifying share in the Hygrade company.

Kraft Containers, Limited, is not a shareholder of Container Materials, Limited, and has placed no deposit with Hardy and Badden to guarantee adherence to any undertaking. Mr. Litteljohn indicated that the policy of the company had been to adhere to the price lists and regulations of Container Materials, Limited, except for one contract which was secured when the company commenced operations.

When asked why he did not apply for membership in Container Materials, Limited, Mr. Litteljohn replied: "I didn't know what to ask for," referring to a possible quota for Kraft Containers, Limited, which, as a new company, had no sales record on which an allocation might be based. He added that he would consider joining the organization "as soon as we become established." At the time of Mr. Litteljohn's evidence his company had been operating less than two full years. Sales of the company, however, had exceeded three-quarters of a million dollars in the year 1937, placing Kraft Containers in sixth place among corrugated box manufacturers on the basis of sales volume. The operations of the company up to that time had been profitable. This rapid rise of a new manufacturing company operating outside of Container Materials, Limited, even though it followed the prices and trade policies established by that organization, suggests that some limitations on the sales increases of its quota members result from the operations of the organization.

Kraft Containers, Limited, does not follow the practice of other non-quota companies associated with Container Materials, Limited, in contributing regularly to the expenses of the organization and accepting penalties for breaches of the regulations. One contribution to the expenses of Container Materials,

Limited, was made on behalf of Kraft Containers, Limited, and this payment is indicated to have been made largely through the interest of C. J. Munce. This company completes some of the regular returns which members of Container Materials, Limited, are required to make. As stated by Mr. Munce, "they are invited guests at their meetings—they come to at least half, maybe to three-quarters of the meetings" (Evidence, p. 810).

It is clear from the evidence that Kraft Containers, Limited, has followed the policy indicated in the memorandum of the meeting of October 22, 1936, previously quoted, in which it was reported that

> "The proposition was put right up to Munce and Littlejohn and they stated their willingness to maintain prices and live up to the letter of the agreement in every way with the exception of putting up any money. . . . ." (Exhibit 118)

4. Dominion Corrugated Paper Company, Limited, Toronto

The Dominion Corrugated Paper Company, Limited, of Toronto, is engaged in the manufacture of corrugated paper products other than containers. Such products represent only a very small part of the business of the corrugated box manufacturers. This company was incorporated in 1931 to effect the amalgamation of the businesses of two companies, Dominion Corrugated Paper Company of Hamilton and Crabtree and McKay, Limited, of Toronto. Shortly after the execution of the agreements of Container Materials, Limited, Crabtree and McKay, Limited, was asked to maintain the prices fixed on corrugated paper products. On December 31, 1931, the general sales manager of the Hinde and Dauch Paper company wrote to this firm:

> "You will recall the writer calling on you a couple of months ago in reference to prices on single face and double face circles and sheets in corrugated stock, and you made it quite clear that although not anxious to tie up directly with the Company or Association, yet you were very anxious to tie up in an indirect way, inasmuch as you would like to co-operate in quoting prices which are competitive with other manufacturers here in Canada."

His letter adds that the price list effective January 1, 1932, was enclosed and continues:

> "We would be glad if you would acknowledge receipt of this advising us of your desire to co-operate so that we can pass it on to the Secretary of our Association, when all members will be informed of the procedure taken and the fact that they will offer to you the same relative protection as you offer them in respect to these quotations." (Exhibit 80)

The Dominion Corrugated Paper Company, Limited, replied on January 2, to the following effect:

> "We are quite willing to co-operate with your association in every way, but we think we should be advised about these other items. We fully appreciate the fact that these items that we have mentioned are of very minor importance to most of the box manufacturers, yet they are to us sizable portions of our total sales, and we certainly would like to come to an understanding about them." (Exhibit 80)

A more definite agreement was reached on November 2, 1933, when the Dominion Corrugated Paper Company, Limited, placed a deposit of $200 with Messrs. Hardy and Badden to guarantee performance of the undertaking outlined in the following letter:

> "In the matter of prices on Single Faced Corrugated Paper Products, this letter will advise you of our willingness to co-operate.
>
> We will conform our prices, quotations, and terms to the prices agreed upon by the Corrugated Paper Manufacturers and enclose our cheque for $200 as an evidence of our good faith. Same to be subject to penalties for any improper quotations or prices on our part.
>
> It is understood that the following exceptions from your general rules are to apply to us; W. J. Bell Paper Company, Ratcliff Paper Company and Victoria Paper

and Twine Company—Jobbers, subject to Jobbers' discounts as in the past with us. Oakville Basket Company also to be treated as Jobbers by us for the merchandising of fruit packing materials. Willards Chocolates prices to be at our discretion until such time as G. W. Hendershot ceases to be a competitor for this business."

(Exhibit 80)

The Hendershot company of Hamilton appears to have been active in securing business for products similar to some of those manufactured by the Dominion Corrugated Paper company and from time to time the latter complained of lower quotations by the Hamilton company. Reference to agreement having been reached with the Hendershot company on circles for fruit packing is made in a letter of April 23, 1934, from the Dominion Corrugated Paper Company, Limited, to Hardy and Badden. Less than a year later, however, in a letter dated February 15, 1935, the Dominion Corrugated Paper company expressed a desire for a free hand to meet competition from the Hamilton company:

"The arrangement which we entered into in accordance with our letter of November 2nd, 1933, does not seem to be any too satisfactory from our standpoint.

We are meeting with a new type of competition from our friends in Hamilton as a result of their expanded activities and we find ourselves unwilling to continue to operate against them without the right of open competition.

As a result we have decided to discontinue this arrangement in so far as it limits our right to compete with the Hendershot Company on a price basis.

We are still willing to afford any co-operation that may reasonably be asked of us in the maintenance of fair prices." (Exhibit 80)

This did not mean a complete withdrawal from the undertaking to maintain Container Materials prices, as the Dominion Corrugated Paper Company, Limited, wrote to Hardy and Badden on April 11, 1935:

"With reference to our recent letter *re* price competition with Hendershott, and subsequent phone conversations. We are adjusting out prices to meet this competition only after we have satisfied ourselves, in each instance, that the competition is from him. We are sure that you will have no cause for complaint on our account, *re* price cutting, that you would not otherwise have as a result of Hendershott. Our books and records are all open for your inspection and we will frankly afford you any information that you ask of us." (Exhibit 80)

The continued recognition by the Dominion Corrugated company of its remaining undertakings with the combination was again indicated in a letter of June 4, 1935:

"We hope to continue co-operating with you in the future and would appreciate being kept fully informed of any price changes that may be decided upon." (Exhibit 80)

Definite notice of withdrawal, coupled with an expressed willingness to resume co-operation later, was given in a letter of August 14, 1936, to H. J. Badden:—

"Following our telephone conversation of yesterday, and due to the competitive condition we are running into on certain of our lines, would you please accept our resignation from the association as of this date.

We are agreeable to leaving our deposit with you until December 1st, in view of your remarks outlining the possibility of complete accord among the various Manufacturers. If this can be brought about then we would be glad to consider the advisability of conforming to any suggested arrangement at that time, as we are anxious to co-operate with the other Manufacturers as much as possible and have no desire to disturb the market by selling our products at prices below normal." (Exhibit 81)

The "complete accord" mentioned in this letter referred to the efforts which were then being made to secure the co-operation of G. W. Hendershot Corrugated Paper Company, in maintaining prices set by Container Materials, Limited. A memorandum dated December 8, 1936, in the files of Container Materials, Limited, indicates that the Dominion Corrugated Paper company was not yet convinced that a firm understanding had been reached by all companies:—

"Mr. Fox of the Dominion Corrugated Paper Company, Ltd., telephoned to-day in reference to Hendershott. He asked what had been done in connection with them

and they told them they had been maintaining prices since the end of October. He said he had an instance where they were not but would not go into detail as he said that he, at the present time, was outside of the association. He then suggested that as soon as we could assure him that they were definitely maintaining prices they would be glad to co-operate again." (Exhibit 81)

Hardy and Badden continued to hold the $200 deposit of Dominion Corrugated Paper Company, Limited, and kept them informed of changes in the prices of products which they manufactured, as the following letter, dated April 26, 1937, from Hardy and Badden shows:—

"Further to our telephone conversation of to-day's date we are setting out herewith new decimals which are effective as and from April 23, 1937 . . . ." (Exhibit 80)

Mr. Bernard Fox, manager of the Dominion Corrugated Paper Company, Limited, was questioned on the significance of this letter:—

"Q. Had you reconsidered your resignation by April 26, 1937?—A. Apparently by not picking up our deposit, we had retracted our statements." (Evidence, pp. 920-1)

Mr. Fox said that, except for sales under one contract and to certain jobbing accounts, his company maintained the established prices. The jobbing accounts are those exempted in the letter of November 2, 1933, already cited, and in the case of these firms their resale price conforms to that set by Container Materials, Limited.

Although the relationship between the Dominion Corrugated Paper Company, Limited, and the manufacturers associated with Container Materials, Limited, has not been maintained under a definite written agreement in recent years, it is clear that this company generally maintains the established price schedules and is content to leave a deposit in the hands of Hardy and Badden as an evidence of its willingness to conform with other manufacturers in their policy of fixed prices. As recently as June, 1937, the Dominion Corrugated Paper Company, Limited, was invited to co-operate with members of the organization in establishing prices on some corrugated paper products, as the following extract from a letter dated June 11, 1937, written by Canadian Wirebound Boxes, Limited, to Container Materials, Limited, indicates:—

"At the last meeting of your agents a Committee consisting of representatives from Kraft Containers, Limited, and Dominion Corrugated Paper Company was appointed to figure and set new prices on apple barrel discs. This most likely will cover the territory of Ontario, Quebec and the Maritimes." (Exhibit 200)

5. Extent of Control

The activities of the combination which have been reviewed in this and the preceding chapter show that by the end of 1936 Container Materials, Limited, had secured either price agreement on the part of all new producers in the field or effective restriction of potential competition which had threatened to interfere with its plans. The only customers not paying at the full fixed price scale were certain customers with whom definite contracts had been made previously. With respect to the fixing of common prices, Container Materials, Limited, at the end of 1936 held practically the same position as when it was established in September, 1931, excepting that a larger number of associated manufacturers were operating in the later period without quotas and deposits.

Monopoly in this complete form, providing for the elimination of competition in prices of all corrugated paper products in Canada, continued until the beginning of 1938. In 1938 a new company, Shipman Boxboards, Limited, commenced the manufacture of corrugated boxes in Hamilton. The organizer of this company, Gerald T. Shipman, had acted for some years prior to 1937 as selling agent for the Bathurst Power and Paper Company, Limited, for its domestic business in kraft liner and corrugating board. It was charged by members of Container Materials, Limited, that Mr. Shipman had endeavoured to enter into an arrangement similar to that made by Container Materials,

Limited, with O. and S. Corrugated Paper Company, by which his company would receive compensation if its sales failed to reach an agreed volume. Mr. Shipman denied making such a proposal and gave evidence that he wished to establish his new business as a going concern before considering seeking membership in or an agreement with Container Materials, Limited. Both Mr. Shipman and members of Container Materials, Limited, gave evidence that no undertaking had been made that Shipman Boxboards, Limited, would maintain the association prices. That these prices were not maintained by the Shipman company appears to be beyond doubt. Question does arise, however, as to the continuance of his independent price policy, particularly in view of the contradictory nature of his evidence on this point. Mr. Shipman indicated that he intended quoting his own prices until he became well established in the industry. As to whether or not once he achieved this position, he would seek or accept full membership in the organization, his evidence was not conclusive. At one point he stated:—

> "I would say that I have stated on several occasions that we were willing to become a member and would like to so soon as practicable. (Evidence, p. 1808)

Even though the Shipman company is competing in price at the moment, its output represents only a very small part of the total sales of the industry. With this single exception all the producers of corrugated products in Canada are subject to the prices fixed by Container Materials, Limited.

The efforts of Container Materials, Limited, to bring the associated members into still closer relations with the principal companies, by having them accept quotas and file deposits, were being actively pursued at the time of the close of this inquiry. The minutes of a meeting of directors on December 15, 1938, record:—

> "that Secretary is hereby authorized to try and arrange an agreement with the following companies:—
>
> G. W. Hendershot Corrugated Paper Company, Limited,
> Superior Box Company, Limited,
> Kraft Containers, Limited,
> Maritime Paper Products, Limited,
> Wilson Boxes, Limited,
>
> giving them percentages based on their 1938 sales, with a minimum deposit of $2,500 and an additional proration to equalize with the deposits now held for other companies."
> (Exhibit 271)

VIII. COMBINATION OF MANUFACTURERS OF PAPERBOARD USED IN SHIPPING CONTAINERS

At the present time there are four principal manufacturers of paperboard used in the manufacture of shipping containers in Canada:—

Bathurst Power and Paper Company, Limited.
Brompton Pulp and Paper Company, Limited.
Gair Company, Canada, Limited.
Hinde and Dauch Paper Company of Canada, Limited.

These four companies comprise the membership of Shipping Case Material Manufacturers' Association, which was formed in 1935. Before examining the agreements which are the basis of this Association, reference should be made to earlier developments with respect to the control of prices of shipping case materials.

1. Manufacturers of Shipping Case Materials

The manufacture of paperboard for shipping containers has undergone considerable change in Canada with the rapid development of the corrugated box industry. Enlarged demand for paperboard has enabled paper mills to specialize in the manufacture of this class of products, and at least one new material, fourdrinier kraft, has become an important product in this field. At present there are five manufacturers of these products in Canada. In 1928, according to a report of the Department of Interior, there were eight.

The Hinde and Dauch company was then, as it is now, the principal manufacturer of shipping cases in Canada, and prior to 1931 it absorbed practically the entire production of its test container board in its own box factories. The manufacture of strawboard was undertaken by the Hinde and Dauch company in 1927, when a factory for this purpose was erected at Trenton, Ontario. The output of this plant was utilized by independent box factories as well as by the Hinde and Dauch company. The production of shipping cases advanced rapidly from 1927 on, and the demand for paperboard led to increased production by the paper mills.

Prices of testboard and strawboard in the period prior to 1929 were relatively high in Canada and the United States. In 1928, however, a sharp break occurred in American prices which was checked in the following year, only to be followed by further declines in 1930 and succeeding years. Canadian prices for testboard at the beginning of 1928 were approximately the same as in the United States. The price of strawboard was somewhat higher in Canada than in the United States. Canadian prices held until August, 1929, when reductions were made bringing prices in line with the lower levels then prevailing in the United States. At this time the price of testboard in Canada was generally \$51.50 per ton, and strawboard \$56 to \$60 per ton. At the time the Canadian Corrugated and Fibre Box Manufacturers' Association was formed, in the fall of 1929, there was some strengthening of Canadian prices of shipping case materials. The prices of this period could scarcely be held in the face of the curtailed demand of 1930, and early in 1930 prices were reduced as paper mills sought to maintain their volume of production. Understandings which existed among members of the Canadian Pulp and Paper Association in regard to paperboard prices became more honoured in the breach than in the observance, especially as the continued fall in American prices put box manufacturers in a

position to meet their requirements by importations. In the fall of 1930 the prospect that importations might be reduced by reason of tariff changes led to efforts being made to re-establish an agreement among the board mills. The following subjects were submitted, in a letter of October 7, 1930, from J. B. McGibbon, O. N. Moore and O. A. Hutchinson to the secretary of the Canadian Pulp and Paper Association for approval or discussion by the paper board mills:—

"(1) A meeting of the proposed Association to be held the second Wednesday of each month at the alternate points of Montreal or Toronto.

(2) Free discussion of problems to promote the most economical means of manufacturing and distributing board.

(3) Definite standardization of grades.

(4) Elimination of side or off-runs sold as job lots.

(5) Discussion of American competition as it affects the different Mills.

(6) Confining operations to grades that the Mills are most adapted to manufacture.

(7) Purchases of waste paper on standard contract form to insure more careful grading, better packing and less shrinkage.

(8) Purchases of waste from Converters to be discouraged.

(9) Mills who are also Converters to charge their Converting Plant schedule prices on all board delivered thereto, to insure that all Converters will be on an equal competitive basis so far as board purchases are concerned.

(10) Mills who are also Converters not to use the fact that they are manufacturers as a means to secure business from other Converters, and generally the higher type of business ethics to be used by the different representatives of the Mills. The salesmen should confine their remarks to selling and prevent being drawn into costs, or such matters as are happening at the Mill Association meetings. As regards the latter, there has been a feeling that customers on many occasions have been in possession of information which never should have passed beyond the Members.

(11) A schedule of prices to be based on manufacturing costs of all Mills and which will be satisfactory to all. Such schedule to be adjusted from time to time according to raw material fluctuations.

(12) After careful consideration your Committee has thought it advisable to establish definite though temporary prices, and it is their thought that these figures should be accepted or substitutes arranged at the next meeting to preclude the chance of irregularities developing before definite action has been taken by the Mills, as an association, and that no contracts be entered into until a schedule of prices approved, and when schedule has been approved, any contract negotiated to conform with the price period.

(13) The filing of present contracts, showing date, price, expiry date and quantity undelivered.

(14) More complete reports to proposed Association of all grades manufactured. This will develop more definite information as to what is being made by each Mill and will be more valuable in the future when it may come to a time when there is more segregation of grades among the Mills.

(15) The necessity of a differential between screening board and chip to promote the movement of the higher grades of pulpboard at proper prices.

(16) A discussion on freight rates in the hopes of securing more business in Western Canada." (Exhibit 258)

The list of prices set forth in this letter included what are known as boxboards as well as materials for shipping cases. A price of $57.50 was suggested for the standard grade of testboard and the same price per ton for strawboard. A price of $80 per ton was also given for kraft liner. The use of kraft liner in the manufacture of shipping cases in Canada was an experiment at this time on the part of certain box manufacturers who had imported this product from the United States. Kraft board is much lighter than jute board of equal strength, so that the number of square feet of paper in a ton of kraft board is much greater than in a ton of jute. The prices of $57.50 and $80 per ton for jute and kraft respectively would result in a cost of $1.84 per thousand square feet of either board.

This effort to increase Canadian prices of paperboard in the face of falling American prices and curtailed business operations was unsuccessful, and by the end of November, 1930, jute board was being quoted at $50 per ton. Representatives of the paperboard mills continued to meet as the Board Section of

the Canadian Pulp and Paper Association. Although price lists were issued by the Board Section or by the group of board mills, price concessions were made by various companies. L. F. Winchell, of the Hinde and Dauch company, in a memorandum of February 28, 1931, to the head office of the parent company in Sandusky, Ohio, mentioned some of the prices which were discussed at a meeting of representatives of board mills at Montreal. Several companies were reported as selling jute board for $47.50. Mr. Winchell wrote that the highlights of the meeting included " the re-stating of the observation of board prices as per list of January 29, 1931 " (Exhibit 177). The price for jute board was re-established at $50. Kraft liner was being offered in the United States at a price which, it was stated, in Mr. Winchell's memorandum, would permit it being landed in Montreal, with all charges paid, at $67 a ton, which was equivalent to a price of $42.50 for the heavier jute liner.

The demand on the part of certain Canadian box manufacturers for kraft board led the Bathurst Power and Paper Company, Limited, to adapt one of its machines which had previously been used for the manufacture of newsprint to the manufacture of fourdrinier kraft board for shipping cases. The intention of the Bathurst company became known in the industry early in 1931, although production did not commence until the late summer of that year. The evidence of Mr. Winchell is that the continued threat of importations led the Brompton company to reduce the price of jute board to $42.50 after efforts had been made to get a customs valuation of $55 per ton placed on kraft board imported from the United States (Evidence, p. 1382). The reduction by the Brompton company was followed by the issuance of a price list, dated June 19, 1931, by the Board Section (Exhibit 159), containing the new price of $42.50 for jute board as well as lower prices for certain other paperboards. Minutes of Board Section meetings of following months record chiefly activities of the group in matters connected with the manufacture and sale of boxboards for folding and set-up boxes, and no apparent effort was made to alter the list price of container boards. In September, 1932, some reduction in price to large users was made by the establishment of discounts for quantity purchases. This concession appears to have been withdrawn before the end of the year.

Prices of paperboard commenced to rise rapidly in the United States in the spring of 1933, in anticipation of the N.R.A., and some of the Canadian mill executives thought the time was opportune to advance prices in Canada and also provide for more definite control over prices and terms of sale. Approval was given at a meeting of the Board Section on April 27, 1933, to the appointment of an auditor whose functions were, as described in the minutes of May 18

> " to investigate any complaint made by a member and to have access to the records of the mill complained of. In the event of the complaint being proven the expenses of the investigation are to be paid by the offending member. In case the complaint is not substantiated then the expense is to be borne by the Section and provided for by special assessment." (Exhibit 163)

No evidence was secured to show that the efforts to advance prices of container board or to establish a check on the activities of board mills was successful at this time. Box factories continued to secure their requirements at previously prevailing prices, and no record has been found of investigation of complaints by the auditor.

These efforts, however, were not abandoned. The Brompton company, in writing to Canadian Wirebound Boxes, Limited, on August 2, 1933, regarding certain prices, stated that the prices would apply " providing the Board Association's new prices go into effect" (Exhibit 261). As most of the box manufacturers had made contracts with board mills covering their requirements for varying periods, no immediate advance in prices could be made even if agreement were reached by the board mills. Towards the end of 1933 it was agreed to establish a price of $46.25 per ton for jute board, with corresponding prices for other container boards. These prices became generally effective in the spring of 1934.

Steps were taken early in 1934 to develop a more rigid form of organization for the board mills. Record of this appears in the minutes of the Board Section for March 22, 1934, although the minute gives little indication of the nature of the development which was to follow:

"Discussion also arose as to the necessity of revising the Trade Customs and establish a fair and unfair trade practices, and grading and classification of grades. Following the discussion Mr. Maclachlan moved, seconded by Mr. Patton, 'That Mr. W. H. O'Reilly be engaged to do the necessary work in connection with this assisted by Committees, to draw up the workings of the Boxboard Sales Company on the understanding that this work be only temporary and if the plan is not acceptable or does not proceed that his engagement be terminated and that the expenses of this temporary work be borne by the members of the Sales Company and assessed pro rata on the tonnage involved under the Boxboard Sales Plan.'

The motion was carried." (Exhibit 163)

The proposal for a sales company, as this minute indicates, had already been advanced among the board mills. In a letter dated August 14, 1933, to the Bathurst company, Louis Lemieux of the Canadian Pulp and Paper Association wrote:

"The Undertaking and Agreement and Plan have been re-drafted as outlined in my letter of July 26th and copies are now being sent out to all members for signature." (Exhibit 246)

This plan provided that all sales of paperboard and pulpboard, with some exceptions, would be brought under the control of a sales company in which each manufacturer would hold shares.

Considerable time was to elapse before the so-called sales company became fully operative, although W. H. O'Reilly, secretary of Board Sales, Limited, wrote to the Hinde and Dauch company on July 18, 1934:

"You are advised that the incorporation of the new Board Section selling company under the name of *Board Sales Limited* has been completed and the Company has been organized to the point when the time has arrived for the making of the subscriptions for stock and the execution of the contracts referred to in paragraphs numbered 3 and 4 of the Plan for collaboration in sales activities." (Exhibit 165)

The securing of agreements with the various board mills was not completed until the beginning of 1935, and the contracts between Board Sales, Limited, and certain manufacturers of paperboard were not formally adopted until a meeting of Board Sales, Limited, held on February 26, 1935. Before this action was taken the principal manufacturers of shipping case materials, i.e., kraft liner and testboard, had " got together and agreed upon a basis for operating a subdivision of Board Sales, Limited, to handle matters pertaining to the above-named grades," as stated in a memorandum of January 23, 1935 (Exhibit 268), from the files of Board Sales, Limited.

The minutes of the Bathurst company for January 30, 1935, contain the following reference to the formation of the Association:

"The Chairman reported that a Meeting of the Members of the Board Section was held on Tuesday, January 22nd, at which meeting the Bathurst Company had made a proposal that the manufacturers of Test Board and Kraft Liner Board should form themselves into a section or an Association for the promotion of friendly business relations and regulation and maintenance of fair prices of Test Board and Kraft Liner Board, and that after considerable discussion between the manufacturers of these products, it has been agreed that the formation of such a separate section was in the best interests of the companies interested in the manufacture of these products, namely,

Dominion Boxboards
Hinde & Dauch Paper Co. of Canada
Bathurst Power & Paper Co. Ltd.
Brompton Pulp & Paper Co.

and that such proposal had been favourably received by the members of the Section.

The arrangements contemplated that the Bathurst Company would become a member of the Board Sales Ltd. with respect to any board products, other than Kraft Liner and Corrugated Material, which it may make in the future, but that Board

Sales would have no jurisdiction in any way whatsoever in respect to its manufacture or sale of Kraft Liner and Corrugating Material; but we would contribute our assessments towards the expenses of Board Sales Ltd. He reported that further discussions between the manufacturers of Test Board and Kraft Liner had taken place, which culminated in a meeting with Mr. Badden, of Messrs. Hardy & Badden, Toronto, on Friday, the 25th, at which meeting a draft agreement had been prepared whereby the parties to the agreement, namely,

Bathurst Power & Paper Co., Ltd.,
Brompton Pulp & Paper Co.,
Dominion Boxboards, Ltd.,
Hinde & Dauch Paper Co. of Canada

had agreed to form themselves into an Association to be called and known as Shipping Case Material Manufacturers Association. . . ." (Exhibit 245)

As indicated by this minute, Shipping Case Material Manufacturers Association was not formed as a subdivision of Board Sales, Limited, but was constituted as an independent organization. The relations which were to exist between the two paperboard organizations were outlined in letters from the members of Shipping Case Material Manufacturers Association to Board Sales, Limited. The letter from Hinde and Dauch Paper Company of Canada, Limited, will serve to indicate the undertaking:

"Toronto 2, Canada.
March 13, 1935.

Board Sales, Limited,
University Tower Bldg.,
Montreal, Que.

Dear Sirs,—

Hinde & Dauch Paper Co. of Canada, Limited, begs to advise that the undermentioned companies:

Bathurst Power & Paper Company, Ltd.,
Brompton Pulp & Paper Company, Ltd.,
Dominion Boxboards, Limited,
Hinde & Dauch Paper Co. of Canada, Limited,

have formed themselves into an Association to be called and known as 'Shipping Case Material Manufacturers Association.'

The objects of this Association are the promotion of friendly business relations between the above-named manufacturers and the maintenance of fair prices for shipping case materials. The agreement embraces all sales in the Dominion of Canada, and the Officers of the Association are Messrs. Hardy and Badden of Toronto and Montreal.

Under the agreement which has been executed by the above-named Companies, Shipping Case Material Manufacturers Association will have entire jurisdiction and control over sales of kraft liner, test liner and corrugating materials manufactured by the signatories thereto, and Hinde & Dauch Paper Co. of Canada, Limited, hereby notifies Board Sales, Limited, that the agreement between it and Board Sales, Limited, is inoperative and without effect in so far as kraft liner, test liner and other corrugating materials are concerned.

During the term of the agreement constituting the Shipping Case Material Manufacturers Association, it will be the policy of the latter to inform Board Sales, Limited, of the trade customs, prices and terms of sale at which the products in question are sold and Board Sales, Limited, undertakes and agrees that its members will co-operate with Shipping Case Material Manufacturers Association on prices, terms of sale and trade customs adopted by Shipping Case Material Manufacturers Association for kraft liner, test liner and other corrugating materials when sold for the manufacture of shipping cases.

Hinde & Dauch Paper Co. of Canada, Limited, will make monthly reports to Board Sales, Limited, of its domestic sales of corrugating products and will pay to Board Sales, Limited, the sums which may be assessed thereon, mentioned in Clause 10, Articles (i) and (ii) of our Agreement with Board Sales, Limited.

Hinde & Dauch Paper Co. of Canada, Limited, agrees to maintain the prices fixed by Board Sales, Limited, on the sales of shipping case materials sold for purposes other than the manufacture of shipping cases, provided the price so fixed is not less than the minimum price established by Shipping Case Material Manufacturers Association on such materials.

This letter is to be attached to and form part of the aforesaid Agreement, which was signed by Hinde & Dauch Paper Co. of Canada, Limited, under date of the 1st day of March, 1935.

Yours very truly,

HINDE & DAUCH PAPER COMPANY OF CANADA, LIMITED.

(Sgd.) L. F. WINCHELL,
Vice-Pres. & General Manager.
(Sgd.) T. E. LLOYD,
Treasurer."

(Exhibit 164)

2. SHIPPING CASE MATERIAL MANUFACTURERS ASSOCIATION

The reasons which led to the formation in 1935 of a separate organization in the paperboard industry to deal with the sale of shipping case materials were not clearly indicated in the evidence. The fullest statement on this point was given by G. T. Shipman, who was selling agent for the Bathurst Power and Paper Company, Limited, in 1935, and vice-president of this company for a period in 1936. Mr. Shipman, who is no longer connected with the Bathurst company, said in evidence:—

"I was opposed to the new Board Sales acting as the association medium for boards used in the manufacture of shipping containers on the grounds that there were quite a large group of mills in Board Sales only a very few of whom manufactured materials used in the manufacture of corrugated boxes, and that that group might have a completely different set of interests and, since they were in the majority, I felt we should have a separate association for our own business completely aside from them, and partly because I felt that that group was very unwieldy in making any great improvement in the industry on account of their numbers and diversification of interest." (Evidence p. 1791)

The essential features of the agreement entered into by the four members of the Shipping Case Material Manufacturers Association are outlined in the following introductory paragraphs:—

"This Agreement made this first day of February, one thousand nine hundred and thirty-five.

BETWEEN:

Bathurst Power & Paper Company Ltd., Montreal,
Brompton Pulp & Paper Company Ltd., Montreal,
Dominion Boxboards Limited, Toronto,
Hinde & Dauch Paper Company of Canada Ltd., Toronto.

WITNESSETH:

1. That the said parties do hereby form themselves into an Association to be called and known as 'Shipping Case Material Manufacturers Association.'

2. The object of the said Association shall be the promotion of friendly business relations between the manufacturers, their agents, and the trade generally, also for the regulation and maintenance of fair prices of Shipping Case Materials and for conference and mutual aid with reference to purchase of supplies and the like.

This Agreement embraces all sales in the Dominion of Canada.

3. This Agreement is entered into until dissolved by mutual consent, but any of the parties hereto shall have the right to retire therefrom on giving ninety days' previous notice in writing to the Secretary-Treasurer of his intention so to do.

4. The Officers of the Association shall be Messrs. Hardy and Badden, Toronto and Montreal, as Secretary-Treasurer who have been elected by the parties hereto to serve for the term of this Agreement." (Exhibit 29)

Decisions of the majority are made binding upon the members of the combination, as indicated by the following:

"Any resolution adopted at any meeting of the Association by a majority of the members then present shall be binding upon all the parties hereto." (Exhibit 29, par. 6)

The basic price control features of the agreement are stated in paragraph 8, coupled with provisions binding the members not to attempt to evade the regulations in any way. It is agreed,

"That they, the covenanters, and the agents and others for whom they are respectively responsible, will not quote, accept or book orders for, offer or agree to sell,

or sell the goods covered by the Agreement, at lower prices or on better terms and conditions than those fixed by the schedule of prices annexed to this Agreement, or fixed by any schedule of prices which may be adopted by resolution of the Association under article 6, in substitution for all or any of the said schedules hereunto annexed." (Exhibit 29, par. 8 (*c*))

Deposit of penal sums of $2,500 and $5,000 (to be added to until a maximum of $10,000 is reached) is agreed to by the members, who authorize the secretary-treasurer of the combination to have access to their books and records at any time:

"That they, the covenanters, will allow the Secretary-Treasurer at all times access to their books of account, papers and correspondence, to enable him to verify any statement made by any of the parties hereto, or to investigate any accusation made against them respectively or the agents and others for whom they are respectively responsible.

And the parties hereto do hereby severally promise, bind and oblige themselves, each in the penal sum set out herein—

Bathurst Power & Paper Company Limited—$5,000.00
plus 1 per cent on all sales made after the date of this Agreement, until a maximum amount of $10,000.00 is reached.

Brompton Pulp & Paper Company Limited—$5,000.00
plus 1 per cent on all sales made after the date of this Agreement, until a maximum amount of $10,000.00 is reached.

Hinde & Dauch Paper Company of Canada Limited—$5,000.00
plus 1 per cent on all sales made after the date of this Agreement, until a maximum amount of $10,000.00 is reached.

Dominion Boxboards Limited—$2,500.00
plus 2 per cent[1] on all sales made after the date of this Agreement, until a maximum amount of $10,000.00 is reached.

towards the others of them, to strictly adhere to, observe and fulfil all the above Agreements, and Obligations and all Rules, Regulations, Prices and Discounts which may from time to time be resolved on, or adopted by the Association. And they further severally bind themselves to pay all penalties that may be imposed upon them under this Agreement for any breach or violation of the same by themselves or their agents, or other persons for whom they are respectively responsible.

And to secure the payment of all such penalties when incurred, each of the parties hereto shall forthwith deliver to the Secretary-Treasurer cash or Dominion or Provincial bearer Bonds at par value, to be deposited by the Secretary-Treasurer to the credit of the Association in the bank aforesaid. And the interest on all moneys deposited under this clause shall be accounted for to the members respectively, who shall have delivered such moneys to the Secretary-Treasurer, as aforesaid, and such interest is to be placed to their credit in the books of the Association." (Exhibit 29, par. 8 (*h*))

The member companies, and the book-keepers, travellers and agents of each company are required to make declarations monthly as to observance of agreements, usder provisions including the following:

". . . each of the parties hereto and their respective book-keepers, and each traveller and each agent whose name has been declared to the Secretary-Treasurer, and the traveller of each agent (all of whose names must be declared to him forthwith), shall send to the Secretary-Treasurer a solemn declaration in the form 'A' hereto annexed, that he has not directly or indirectly broken or violated, or permitted to be broken or violated, the terms of this Agreement, and is not aware of any such breach or violation." (Exhibit 29, par. 9)

The form of the declaration required is set out as follows as annex "A" to the agreement.

"THE SHIPPING CASE MATERIAL MANUFACTURERS ASSOCIATION

DECLARATION

required by Agreement dated February 1, 1935

I, of

in the County of

do solemnly declare:

That I am for

one of the parties to the above mentioned Agreement.

That during the month of 19 , neither I nor to the best of my knowledge and belief, any other person for or on behalf of the said party, did in any way whatsoever consign any of the goods covered by the said Agreement to any person

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(1) By resolution of March 20, 1935, this percentage was reduced to 1 per cent.

whomsoever on any pretext, nor allow nor pay any commission except to bona fide agents whose names have been previously declared to the Secretary-Treasurer of the said Association, nor sell nor invoice the goods covered by the said Agreement except in the name of the said

That I have not, nor to the best of my knowledge and belief, has any other person as aforesaid, either directly or indirectly resorted or had recourse to any scheme or subterfuge whatever, as an inducement, or aid, or which may operate as an inducement or aid, in making present or future sales of goods.

That no goods covered by the said Agreement have been sold by me, nor, to the best of my knowledge and belief, by any other person as aforesaid (except to members of the said Association) at any lower price than those fixed by the said Association and in force during the said month, and that no rebates, discounts (except as allowed by the said Association and then in force) drawbacks, allowances, or inducements whatever, have been made or allowed by me, or, to the best of my knowledge and belief, by any other person as aforesaid, as an inducement to any person to purchase goods.

That no goods have been sold by me, nor, to the best of my knowledge and belief, by any person aforesaid, subject to a decline in price, or for delivery except as provided for in clause 'g' of section 8 of the Agreement.

And I make this solemn declaration, conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of 'The Canada Evidence Act.'

Signed and Declared before me
at this
day of
A.D. 19 . }"

(Exhibit 29)

The price schedule adopted on the formation of the Association incorporated the prices on which general agreement had been sought by the mills in 1934. The details of prices are set forth in the minutes of a meeting held in Toronto on January 30, 1935:

"*Resolved:*

That effective forthwith the following schedule of prices and terms, etc., is adopted:—

Container Board:

Double Lined Solid Fibre Container Board— ·040 and up..........	$65 00
Single Lined Solid Fibre Container Board— ·040 and up..........	62 50
Testboard—in rolls only (and must not be sold in sheets):	
90 to 100 Test— ·016 to 66 lbs..	46 25
Weight to be 66 lbs. to 1,000 sq. ft. with no greater variation of weight than 5 per cent allowed by usual trade practices.	
West of Sudbury, Ontario— ·016 to 66 lbs........................	57 25
135 Test—differential $2.50 per ton; caliper to be not less than ·025.	
155 Test—differential $7.50 per ton; caliper to be not less than ·030.	
Kraft Liner:	
Basis 42 lbs. to 1,000 sq. ft. ·016..............................	72 66
Basis 50 lbs. to 1,000 sq. ft. ·016..............................	61 05
West of Sudbury, Ontario	
Kraft Liner 42 lbs. ·016..	89 95
Kraft Liner 50 lbs. ·016..	75 55
Corrugating Kraft, Straw and Chipboard:	
·009 Caliper, 34 lbs. to 1,000 sq. ft. Straw	52 50
·009 Caliper, 28 lbs. to 1,000 sq. ft. Kraft	63 75
·009 Caliper, 34 lbs. to 1,000 sq. ft. Chipboard....................	50 00
West of Sudbury, Ontario	
·009 Caliper, 34 lbs. to 1,000 sq. ft. Straw	63 50
·009 Caliper, 28 lbs. to 1,000 sq. ft. Kraft	77 10
·009 Caliper, 34 lbs. to 1,000 sq. ft. Chipboard....................	63 50

Sales Tax Extra.
Terms of Sale, Net Cash 30 days.

The above prices are F.O.B. mills, delivered to customer, and the actual freight paid by the customer to be allowed by credit note." (Exhibit 25)

These prices were continued until April 30, 1935, after which date, under a resolution adopted at a meeting on March 20, prices were to be given on a yardage basis. The resolution read:

> "That the present price schedule as adopted at meeting held January 30, 1935, shall continue in effect until April 30, 1935.
>
> Effective May 1, 1935, prices shall be established on a yardage basis equivalent to present prices, which will be an approximate advance of 30 cents per ton, and these new prices will continue in effect to June 30, 1935." (Exhibit 25)

Decision to notify Board Sales, Limited, of all changes in prices, terms and conditions, was made at a meeting held on March 20, 1935.

The membership of Shipping Case Materials Manufacturers' Association has remained unchanged apart from the replacement of Dominion Boxboards, Limited, by Gair Company, Canada, Limited, which purchased the Dominion Boxboard mill in 1936.

The close relationship that exists between the Shipping Case Material Manufacturers Association and Container Materials, Limited, with two members of the former also members of the latter, and with both of them under the same secretarial administration, strengthens the hands of the members of each group in maintaining prices and securing adherence to their regulations, and does much to guarantee the continued existence of the two organizations. L. F. Winchell of the Hinde and Dauch company, in a letter of November 13, 1937, to one of the Winnipeg box manufacturers, expressed the view that "the biggest assurance of Container Materials continuing will be obtained through the maintenance of S.C.M.M.A." (Exhibit 278). General changes in prices have been made by both organizations practically simultaneously since 1935, on each occasion after discussion between members of the two organizations. A slight increase in the price of shipping case materials was made in July, 1935, without any change taking place in the price of containers. The inter-relations of the two associations, in this connection, are indicated in the following extract from an office memorandum of Brompton Pulp and Paper Company, Limited, dated June 10, 1935:

> "As regards our prices for Board, it is recognized that the spread between Board and Box prices is too great. The Bathurst Company, represented by Mr. Shipman, were strong for the idea of no advance now, but for making a $3.00 to $4.00 advance effective for the last quarter of this year. Mr. Badden advised the meeting that any such advance during this year would create chaos and pointed out that the present offered opportunity to advance say One Dollar per ton, feeling that the Boxmakers would absorb same without objection.
>
> Bathurst finally came into line and it was agreed to advance liner 3c. per M sq. ft. which means 91c. per ton on ·016 Jute Test and $1.20 per ton on ·016 Kraft Liner 50 lb. No advance was made on ·009 Corrugating and the Winnipeg prices remain as formerly." (Exhibit 261)

Differences of interest and opinion between the two organizations naturally are not absent. During the recent period when prices of shipping containers in the United States again declined, thus creating the possibility of an increase in imports from the United States, some of the box manufacturers pressed the board mills for reductions in price, and these have been made only after the lapse of some time. The significant feature is that no individual manufacturer in either organization can initiate a price change. Action must be delayed until agreement has been reached among at least the majority of the members. There can be little doubt that adjustment to changing market conditions would proceed more quickly if each manufacturer were free to formulate his selling policy in relation to the conditions affecting his business.

Control of the quality of boxes, particularly as relating to non-test boxes, to which reference has already been made, is illustrated in the way in which the combination of box manufacturers was assisted by the related combination of paperboard manufacturers in carrying out certain restrictions. For a period commencing January 1, 1935, such boxes were not supplied by members of

the box association. The members of the Shipping Case Material Manufacturers Association assisted in this action by adopting a resolution on April 25, 1935, which provided "that no caliper between ·009 and ·016 shall be made. The quality of ·009 shall be dry finish, except when made for use other than shipping cases" (Exhibit 25, p. 19). This resolution had the effect of eliminating the supply of intermediate weights of paper such as ·012 which were being used by some box manufacturers in the production of non-test cartons.

Another danger arising out of the close relationship that exists between the two organizations is seen in the possibility of joint action being taken by them to restrict freedom of entry of new firms into the corrugated box industry. No proof has been found of concerted action on the part of the two combinations to restrain any firm from establishing a corrugated box plant. It has been found that individual members of Container Materials, Limited, have on occasion requested members of the Shipping Case Material Manufacturers Association to assist in dissuading some firm that was considering going into the field. In 1936 an instance of this occurred when it became known to the members of Container Materials, Limited, that a company associated with a textile firm was considering the establishment of a corrugated box plant. Mr. Hayes of Shipping Containers, Limited, made representations to the Bathurst and Brompton companies, who were customers of the textile firm, that they should interview the firm and indicate that it was not a propitious time to establish a box plant. This was done and, whether because of the discussion with the board mills or for other reasons, the proposal to establish a box plant was not carried out. The Hendershot company of Hamilton was charged a premium on its purchases of paperboard for a period in 1934, shortly after it entered the field, under circumstances which are described in Section VII of this report. More recently, Shipman Boxboards, Limited, which commenced business in Hamilton in 1938, found it impossible to secure supplies of shipping case materials from any member of the paperboard combination in Canada. Here, again, no evidence was found that collusion of members of either or both combinations was responsible for the refusals to sell. A large proportion of the Shipman company's requirements of paperboard in 1938 was brought in from the United States.

Agenda of meetings of Container Materials, Limited, indicate that "new firms" has been a subject listed for discussion at several meetings. No record appears in the minutes of the nature of discussions on new firms, apart from reference to firms with whom definite understandings have been reached. Nor has any indication been found in the minutes or other records that Container Materials, Limited, has made formal representations with respect to such potential competition, or has authorized them to be made. Such action as has been taken appears to have been taken by individual members of the organization.

3. Export Allowances

Provision for price concessions for export trade is a further instance of joint action by the two organizations. Under the provisions of the Customs Act a drawback of duties may be given on goods which have been imported into Canada and then exported. Some Canadian manufacturers who use large quantities of shipping containers for their export business have found it profitable at times to meet their export requirements by importing containers from the United States and securing a drawback of the duties paid on the importations. Such shipments may occur when the differential between the prices of American and Canadian boxes is more than sufficient to cover the cost of transportation. Some box manufacturers have considered that special prices should be given when necessary to assure holding the trade in boxes used in export shipments. Under the control exercised by Container Materials, Limited, no associated manufacturer may give such concessions without the consent of the

organization. With the formation of the combination of paperboard manufacturers it became impossible also for any of the members of that organization to quote lower prices for paperboard to be used in such containers without securing the approval of the association.

Efforts were made by manufacturers of corrugated boxes to secure the agreement of the members of both combinations to some arrangement under which special prices could be allowed for containers which were to be exported. The minutes of a meeting of the directors of Container Materials, Limited, on November 27, 1935, record the following agreement:

> "It was reported by some agents that they had been notified by domestic customers that in future in order to meet competition on their export business they would be required to import their boxes, which would be subject to 99 per cent drawback on the amount of duty paid when later exported, unless they could obtain some concession in the price of these boxes from the Canadian manufacturers, and it was,
> *Resolved*—
> That subject to the following conditions the box manufacturers are prepared to allow domestic customers purchasing boxes for export purposes a discount of 15 per cent off the present tariffs . . . ." (Exhibit 4, p. 122)

The conditions under which this discount would be granted were that purchasers of such boxes should furnish a certificate of export and that the board mills would allow the box manufacturers a discount of 15 per cent on the paperboard used in such boxes.

The discount on finished boxes was increased within a month from 15 to 20 per cent when the board mills agreed to increase their discount on raw materials to 18 per cent. This latter percentage was based on the difference between the price of liner board under the agreement of the Shipping Case Material Manufacturers Association and the price prevailing in the Detroit area in the United States. The procedure adopted was for the customer to furnish the box manufacturer with a certificate of export which would be submitted for approval by the box manufacturer to the secretary of Container Materials, Limited. This officer, who is also secretary of the Shipping Case Material Manufacturers Association, would transmit the certificate to the board mill designated by the box manufacturer, and the board mill was then to make a rebate of 18 per cent on the value of the raw material represented in the finished boxes.

In order that no member of Container Materials, Limited, would cultivate such business too actively it was provided that "the regular rate of pool tax shall apply on all such export boxes, and shall be figured on the original invoice value" (Exhibit 4, p. 123). The resolution of the Shipping Case Material Manufacturers Association authorizing rebates for export purposes was passed at a meeting held on January 3, 1936, and after setting forth the price differential on which the allowance would be calculated, it provided:

> "The above rebate arrangement to apply only to the purchases for export of Shipping Case Manufacturers who purchase their entire requirements of shipping case materials in Canada, regardless of whether such requirements are purchased for domestic or export purposes. All such rebates shall only be made under the direction of the Secretary of Shipping Case Materials Manufacturers Association, for which purposes he shall require affidavits and regular Governmental Documentary evidence."
> (Exhibit 25, p. 27)

This system of rebates was first adopted for three months with provision for extension for further periods. It was maintained until October, 1938, at which time a general downward revision in prices was made and the export allowance was discontinued by both board mills and box manufacturers. Some members of Container Materials, Limited, had favoured the abandonment of the export allowance much earlier if the situation had appeared favourable for such action. The Corrugated Paper Box company wrote to Container Materials, Limited, on June 10, 1937, that "if information should come to your hand that

prices in the United States are sufficiently advanced, we would strongly advocate the discontinuance of the export allowance" (Exhibit 59). Prices in the United States did not advance and, in fact, became considerably lower after June, 1937. The action of Container Materials, Limited, in reducing prices by 18 per cent in October, 1938, was used as the occasion of eliminating the export allowance.

4. Extent of Control and Other Considerations

At the time of the formation of the Shipping Case Material Manufacturers Association it was estimated that its four members manufactured 97 per cent of the container materials sold, according to a memorandum, dated February 13, 1935, in the files of Board Sales, Limited (Exhibit 268). In the pre-depression period at least eight firms were producing materials for shipping cases. The evidence of witnesses in this investigation is that apart from Strathcona Paper Company, Limited, which produces a limited quantity of strawboard, no Canadian mills other than the four members of the Association are presently producing paper board for shipping cases.(1) With respect to fourdrinier kraft paperboard it was stated by several witnesses that no paper mill could engage in its production without a considerable investment of capital. With regard to jute paperboard it was suggested that a number of mills, some of which have in the past manufactured this product, could readily produce supplies if they considered the manufacture would be profitable.

Prices fixed under the Shipping Case Material Manufacturers Association have been established in a manner to yield the same price per thousand square feet for products of equivalent test strength whether made of jute or kraft. The first price schedule established by this combination was based on prevailing trade quotations, which were on a tonnage basis yielding equivalent yardage prices. Since May 1, 1935, the procedure has been simplified by setting prices per thousand square feet. The resulting tonnage prices, which provide the basis of calculations in the industry, vary with the number of square feet per ton of paperboard.

The determination of prices in this manner results in arbitrary prices which are not related in any direct manner to the costs of manufacture. In 1932, when the price of kraft paperboard was established in relation to a price of $42.50 per ton for jute board, the price of 50-lb. water finish kraft was $56.10 and 42-lb. dry finish kraft $66.80. The secretary of the Bathurst company wrote at that time to the general manager of the company "As you know, the cost of manufacturing the Dry Finish is the same as the cost of manufacturing the Water Finish" (Exhibit 246). He suggested that both types of kraft board should sell at the same price per ton. This suggestion was not accepted, and when control of paperboard prices was established by the combination the price per thousand square feet of all types of ·016 liner was set at the same figure and no lower yardage price has been permitted for 42-lb. kraft. In the United States, according to a report of "Official Board Markets" of June 25, 1938 (Exhibit 249A), 47-lb. kraft was selling generally at $1.17 per thousand square feet and the 42-lb. sheet at $1.05, which would result in tonnage prices of approximately $50 for either weight. The price schedule of the paperboard combination for June, 1938, with a price of $1.56 per thousand square feet for either 50-lb. or 42-lb. kraft, yielded tonnage prices of $62.40 and $73.80 respectively.

Changes in weights of paperboard are of immediate concern to paper mills as any reduction in the weight of a particular product means a loss of tonnage which may result in smaller financial returns. Whether a reduction in weight results in a product of lower quality depends on several considerations including the grade of the ingredients and the nature of the processing. The situation now is, however, that changes in weights of paperboard can be made only upon

(1) This evidence did not relate to the production of such materials on the Pacific Coast.

the joint agreement of the members of this group of mills, as is indicated in a letter of March 25, 1938, from G. W. Brown of the Gair company to an official of the Bathurst company, outlining the position taken by L. F. Winchell of the Hinde and Dauch company:

> "Further to my letter of the 24th addressed to Larry and in line with our phone conversation this afternoon, I had a further talk with Lute who states that he had a letter from Phil Scowen to-day stating that he felt 42-lb. Dry Finish Liners should be established, to which Lute has replied that to his knowledge, American manufacturers of this weight have doubts as to the advisability of having introduced this quality at the present time and that in line with his earlier discussions with Mr. Frohman, they are going to oppose its introduction because it means debasing of price, of quality and of tonnage, not only for the Kraft mills but for the Jute mills as well and that with its introduction, his Company has no choice but to withdraw from Container Materials, S.C.M.M.A. and Board Sales as well. Quite frankly, he states he is not making this in the form of a threat but they have endeavoured to be outstanding in their co-operation on the principle of live and let live and that the agitation for 42-lb. Dry Liners is not in line with the statement made at the Container-Mills meeting the other day when Harold Badden asked Cliff Munce if a reduction of ten per cent on regular liners was granted if there would be any necessity of introducing the 42-lb. Dry Finish boxes and Cliff's answer was in the negative. Quite naturally Lute cannot help but feel that now having accomplished the reduction in prices, that the agitation is now being forced to bring in Dry Finish Liners to further complicate the situation not only from the standpoint of the mills but also the boxmakers. Quite honestly the situation is so filled with danger that I think a four-cornered discussion following the Board Sales Meeting, even if it is necessary to spend an extra day, will be well worth the time given to the situation." (Exhibit 251)

Each of the products, jute board, fourdrinier kraft board and strawboard, is made largely from different raw materials and manufactured by a different process. Under competitive conditions the relative prices of each product would reflect to some extent the conditions surrounding its manufacture. It is evident that no great divergence between the prices of jute and kraft liners could take place without the substitution of one product for the other in the manufacture of shipping cases. The same situation is probably true with respect to strawboard and kraft board for corrugating purposes. The maintenance of equilibrium between the contending products would not, however, be brought about by arbitrary fixing of prices but by the conditions of the market and sources of supply.

The small membership of the Shipping Case Material Manufacturers Association and the restricted number of products controlled by the association have not necessitated the complexity of regulations which has characterized the operations of Container Materials, Limited. Price control has been maintained, however, in no less rigorous manner. The accounts of members of the Shipping Case Material Manufacturers Association are subject to detailed audit by representatives of the combination. Price control has been further facilitated by the standardization of grades and colours of paperboard, which has been effected by joint arrangement between the two combinations. It is recognized that such measures of standardization and simplification may result in economies being effected by board mills and shipping container manufacturers. When such measures are used, however, to reinforce a rigid system of price fixing without regard to actual differences in cost of various manufacturers, they must be considered as part of the general program to eliminate price competition which has been the essential function of Shipping Case Material Manufacturers Association.

IX. CONCLUSION

This report has dealt with the activities of two trade combinations, Container Materials, Limited, which was formed in 1931, and Shipping Case Material Manufacturers Association, which has been operating since 1935. The principal agreements under which they have operated, the objects sought to be achieved, the manner in which the agreements have been administered, as well as the results which have followed from their enforcement, have been set forth in the present report largely in the language of the documents and of the members of the organizations themselves.

Commencing with a series of written agreements under which manufacturers in the corrugated box industry bound themselves to absolute adherence to the fixed prices on which the organization decided, Container Materials, Limited, developed a system of control to prevent any possible deviation from these agreements. This system of control has been rigidly enforced. Deposits varying in amount from $500 to $10,000 were placed by the members with the management of the association as guarantees that prices would be maintained and that its other regulations would be observed. These deposits, in the case of quota members, have been added to through a levy of one per cent on sales, until in 1938 the total accumulation amounted to over a quarter of a million dollars. Fines were provided for and have been imposed whenever infractions have been discovered. Affidavits have been required each month of certain directors and all sales managers and travelling salesmen of all companies, in which they swear that they have maintained prices and have not "directly or indirectly made any allowance, rebate, discount or other inducement to any customer." A scheme of sales allotments or quotas has been developed under which each member subject to the quota arrangement is allotted a certain percentage of the total business, paying a penalty if he sells beyond his quota, or receiving cash compensation if he sells below. The giving of any advantage to a customer by means of improved quality or service at the agreed price is checked by a fixing of the qualities of materials used and restrictions on the services that may be rendered. To enable the management of the combination to satisfy itself that the conditions of the agreements are being fulfilled, each manufacturer permits authorized representatives of the association to have "free access at any time to his plant, books and records of every kind." Where new competition has developed, financial or other inducements have been offered the new companies to persuade them to conform to the price agreement, with the result that at present only one company, and that one established in 1938, is not maintaining these prices. In one instance where new competition was threatening to disrupt the price agreement, the method used was that of joint purchase of the business in order to effect its withdrawal from the industry. When these facts are considered, and when it is realized that the industry has operated until recently under a tariff protection which worked out to between forty and fifty per cent, it is apparent that price competition as a public safeguard in this industry has been all but completely suppressed by the operations of this association. Indeed it would be difficult to devise a more complete elimination of price competition in any industry than has been achieved through the operations of Container Materials, Limited, in connection with the manufacture and sale of shipping containers. Certainly nothing more complete in this respect has been the subject of investigation under the Combines Investigation Act since it was passed in 1923. A combination of this

type, if permitted to continue to operate in restraint of trade, would also be likely to be of greater permanence than a voluntary trade association, because it is an incorporated company in which the members have substantial holdings.

In the case of the combination of manufacturers of paperboard, known as the Shipping Case Material Manufacturers Association, the objective, the elimination of price competition, has been the same as that sought by the manufacturers of corrugated boxes. The method of the incorporated company has not been followed and no quota system has been adopted. The tariff protection is not as high and therefore the industry is more subject to outside competition. This group has not encountered the same competitive attempts from concerns outside the association as the combination of box manufacturers, and consequently has had no occasion to purchase competitive equipment or make other outlays in order to persuade competitors to conform to their agreements. In all other important respects the measures of price control adopted by the two combinations are of the same character. Written price agreements form the basis of the combination of paperboard manufacturers. Infringement of these agreements brings upon a member the financial penalties which the secretary of the association is authorized to impose, and a substantial deposit is required of each company as a guarantee that these penalties will be accepted. The machinery for enforcement is substantially the same as in the case of Container Materials, Limited.

These methods of control are described in greater detail in earlier sections of this report. One effect of this control would appear to have been inevitable—the attraction of new capital to an industry which had developed such an elaborate scheme for profitable operations. The influx of new companies into the corrugated box industry has continued throughout the nineteen-thirties. As already indicated, however, each newcomer, with the one recent exception, has been absorbed into the combination, usually when it became established after operating for a period at selling prices below the fixed prices of the combination. If the capacity of the industry had been far below the needs of the country the entry of these firms would have been an economically sound development. When it is realized, however, that this type of control has encouraged an increase in capacity to produce far in excess of the country's needs, the disservice to the public is apparent. Even in 1934 one of the heads of the Hinde and Dauch company in the United States referred to "the already extremely large excess capacity in the industry in Canada". In spite of greatly increased demand since that year, improvements in existing equipment and the installation of new machinery have caused the persistence of overcapacity.

In the past five years four new corrugated box plants have been established in Ontario. The experience of one of these, O. and S. Corrugated Products Company, of Toronto, is related in Section VI of this report. Within a month of the establishment of the O. and S. company, the members of the combination induced its owners to agree to maintain the fixed prices, and secured this agreement by offering the company a sales allotment and a guarantee that even if the company produced nothing it would be compensated to the extent of $30,000 for its first nine months with the group. The sales of the O. and S. company dropped sharply within a month of joining. Its sales for the entire nine months totalled only $19,355; its receipts from the members of the combination for the same period amounted to $26,128. Arrangements on a similar basis continued, with the result that in the twenty-five months period ending April 30, 1938, payments received by this company from the group amounted to 84·5 per cent of its sales. In other words, under this arrangement for every dollar of sales made by this company it received an additional 84·5 cents from the other members of the combination. In this twenty-five months the O. and S. company was paid a subsidy of $69,690, largely if not altogether as a return for its undertaking to refrain from any

competition in price with the members of the combination. This amount was paid to this Ontario company in several instalments by all the members of Container Materials, Limited, including those whose plants are located in the Maritime Provinces, Manitoba and British Columbia.

A total payment of about $86,000 was made by the association to Building Products, Limited, for a somewhat similar purpose. This company, which prior to 1935 had been manufacturing fibreboard shipping containers, for the greater part of the time under the price agreement, declared its intention to enter the corrugated box field. Negotiations between Container Materials, Limited, and Building Products, Limited, resulted finally in the purchase of the fibreboard box business of the latter at Portneuf, Quebec, for approximately $86,000, of which amount only $5,655 was recovered through the sale of the machinery to the member companies.

The quota system operated by the combination of box manufacturers has been responsible for other large outlays on the part of some of its members. These outlays have in turn been distributed to the other members of the association who have not reached their allotted proportions of the total sales. The payments of one firm into the pool for the six-year period 1931-1937 were $186,132. Pool payments to one member for the one year 1937 amounted to $62,468. This sales allotment or quota plan is reviewed in Section IV of the present report.

Some of the effects of the quota system as employed by trade combinations are well described by A. F. Lucas in the following extract from "Industrial Reconstruction and the Control of Competition," a study of recent developments in the control of industry in the United Kingdom:

> "There probably is no method of determining the relative position of a firm except through some simple and more or less arbitrary basis such as past output. Yet one cannot watch the operation of these quotas without profound misgivings. The crystallization of an industry into a permanent pattern from which no individual producer is allowed to deviate would seem to have extremely prejudicial effects on the efficient conduct of that industry. Even though a measure of flexibility is attained through some form of the compensatory quota system, it is only at the cost of a tax on those firms who desire to expand. No touchstone has been discovered whereby the less competent producers may be subjected to restraints while those most worthy to survive are released. The application of restrictions sufficiently rigorous to achieve the ultimate objectives of control inevitably inflicts serious and undeserved hardship on many producers. While an arbitrary standard such as past output has all the appearance of justice, actually it bears much more heavily on some producers than on others."
>
> (pp. 309-310)

Mr. H. E. Manning, K.C., counsel for the two combinations under investigation, made extensive reference in his argument at the conclusion of the inquiry to matters set out in Lucas's book, and discussed various measures of government control of industry in Great Britain and elsewhere. Mr. Manning's argument related in part to legislation dealing with the marketing of natural products for which various legislative bodies have authorized the adoption of certain measures of control. It is evident, however, that whatever may have been the circumstances which led to the passage of such legislation, the status of legally constituted marketing bodies cannot be advanced to support the position of a private trade combination which has assumed substantial control of an industry in the interests of its own members. Mr. Manning dealt at somewhat greater length with permissive legislation in the United Kingdom under which collective arrangements have been authorized for certain industries, with provision for varying degrees of industrial regulation and control. The instances which he cited were certain depressed British industries which had become matters of public concern and the remedies for whose ills Parliament had decided could be found in the delegation of authority to certain groups defined by statute. Here again the authority publicly vested in such bodies by parliament in the public interest cannot be advanced in justification of the control which individual trade combina-

tions have taken to themselves, largely through secret agreements, to serve their own private interests. Even in the case of trade controls operated under public authority, the problem of protecting the public interest in the absence of price competition is being found to be an increasingly difficult task.

It was claimed by counsel for Container Materials, Limited, that the prices set by that association must be considered reasonable because they were based on cost. This contention has been met in the discussion of the so-called cost method of setting prices earlier in the present report. It is clear that the prices fixed were not established on the basis of actual costs and that the method pursued was an arbitrary fixing of prices by the group. With respect to shipping case materials, no evidence was put forward which would indicate that the prices set by Shipping Case Material Manufacturers Association were based on costs. Even if it were possible to determine accurately each manufacturer's actual cost of producing each class of corrugated box or paperboard at a given time, question would remain as to what part of these costs had developed because of the absence of competitive conditions. In reports made by Jenkins and Hardy, auditors for the corrugated box combination, figures are submitted showing "that the individual member's cost of doing business varied widely." Total costs of members in 1937 ranged from 79 per cent to 97 per cent of sales, on the basis of the accounting methods adopted by the association's auditors in their surveys. Cost variations to this extent are found even though the agreements among the member companies embrace types of materials which may be used and though the cost of principal materials is fixed by the price agreement of the manufacturers of paperboard.

The control over prices which these combinations can exercise is subject to certain broad limitations, aside from those provided by law. If prices were advanced high enough or maintained when prices elsewhere were falling, importations would be made from lower priced sources of supply. New producers would be attracted to the industry and possible substitutes would also be developed. Other types of containers are now available for the same uses as paperboard shipping containers. These include principally wirebound boxes, wooden boxes and crates, which are higher cost products and which in certain other respects, such as adaptability for printing, storing, handling and packing, lack advantageous features possessed by paper containers. Such potential competition, as a more remote influence, does not perform or approach the function of normal price competition within an industry as an impartial check on prices and as an encouragement to efficient and economical operations. In this industry potential competition, where it has shown itself in the form of new producers, has been limited in its effects by the practice of inducing newcomers to enter the combination or to conform to its prices. The result in this respect has been further additions to the productive capacity of the industry, with little or no advantage to the public.

Detriment to the public through the suppression of competition by trade combinations is the test which the higher courts in Canada have consistently applied in cases of conspiracy in restraint of trade. Whether prices at a given time have been reasonable or unreasonable is not the question into which they have found it necessary to make minute inquiry in ascertaining whether or not agreements have been against the public interest. The prime question was stated by Mr. Justice Anglin, later Chief Justice Anglin, in his judgment in *Weidman* v. *Shragge*. He said:

> "the prime question certainly must be, does it [the agreement alleged to be in contravention of section 498 of the Criminal Code], however advantageous or even necessary for the protection of the business interests of the parties, impose improper, inordinate, excessive, or oppressive restrictions upon that competition the benefit of which is the right of every one." (1)

(1) (1912) 46 Can. S.C.R., 42-43.

In the same case the law was further interpreted by the present Chief Justice of Canada, Sir Lyman P. Duff, in the following paragraph which has been cited in later judgments:

> "The particular sub-section with which we are concerned was plainly intended to protect the specific public interest in free competition. In applying the section the public interest in freedom of contract in commercial matters, and especially in freedom of disposition by the individual of his own labour and skill and in freedom of dealing in private property, must, of course, be kept scrupulously in view; otherwise there might conceivably be some risk of ultimately defeating the objects of the enactment by depriving the legitimate commercial energies of the country of some of their important incentives. But giving full effect to these considerations, I have no hesitation in holding that as a rule an agreement having for one of its direct and governing objects the establishment of a virtual monopoly in the trade in an important article of commerce throughout a considerable extent of territory by suppressing competition in that trade, comes under the ban of the enactment."(1)

Mr. Justice Mignault similarly stated in *Stinson Reeb Builders Supply Company* v. *The King*, in 1929:

> "It may be emphasized here that the advantage thus obtained by the manufacturers and dealers of the association is not the proper test. What is the true test was laid down by this court in *Weidman* v. *Shragge* as above stated. Injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine, is what bring an agreement or a combination under the ban of section 498 Cr. C."(2)

He indicated what he meant by "injury to the public" in this case by stating, in the sentence immediately following, that "This injury is shown by what occurred in January, 1925." What occurred in January, 1925, was the formation of an association which was later charged with operating in restraint of trade and the members of which were convicted without reference to the actual prices which were fixed.

In this inquiry the agreements which form the basis of the operations of the two combinations, Container Materials, Limited, and Shipping Case Material Manufacturers Association, have been examined in detail, together with the minutes and other records of both organizations and various records of the firms which comprise them and are associated with them. Testimony of representatives of these firms has been heard and is recorded in approximately twenty-five hundred pages of evidence. Having considered this documentary and oral evidence, it is my conclusion that both these associations have operated and are likely to operate to the detriment and against the interest of the public and are therefore combines within the meaning of the Combines Investigation Act.

In my opinion the following have been parties to the first combine mentioned above, described as Container Materials, Limited, and have knowingly assisted in its formation or operation:

Shipping Containers, Limited, Montreal, P.Q.
Standard Paper Box, Limited, Montreal, P.Q.
Martin-Hewitt Containers, Limited, Peterborough, Ont.
Canadian Wirebound Boxes, Limited, Toronto, Ont.
The Corrugated Paper Box Company, Limited, Toronto, Ont.
Gair Company, Canada, Limited, Toronto, Ont.
Hinde and Dauch Paper Company of Canada Limited, Toronto, Ont.
Hygrade Corrugated Products, Limited, London, Ont.
Hilton Brothers, Limited, Winnipeg, Man.
Martin Paper Products, Limited, Winnipeg, Man.
Canadian Boxes, Limited, Vancouver, B.C.

(1) (1912) 46 Can. S.C.R., 36-37.
(2) 1929 Can. S.C.R., 280.

Maritime Paper Products, Limited, Halifax, N.S.
Wilson Boxes, Limited, Fairville, N.B.
Dominion Corrugated Paper Company, Limited, Toronto, Ont.
O. and S. Corrugated Products Company, Toronto, Ont.
G. W. Hendershot Corrugated Paper Company, Limited, Hamilton, Ont.
Kraft Containers, Limited, Hamilton, Ont.
Superior Box Company, Limited, Kitchener, Ont.

Container Materials, Limited, Toronto, Ont.
H. J. Badden, President and Secretary-Treasurer, Container Materials, Limited, Toronto, Ont.

In my opinion the following have been parties to the second combine mentioned above, described as Shipping Case Material Manufacturers Association, and have knowingly assisted in its formation or operation:

Bathurst Power and Paper Company, Limited, Montreal, P.Q.
Brompton Pulp and Paper Company, Limited, Montreal, P.Q.
Gair Company, Canada, Limited, Toronto, Ont.
Hinde and Dauch Paper Company of Canada, Limited, Toronto, Ont.
Messrs. Hardy and Badden, Secretary-Treasurer, Shipping Case Material Manufacturers Association, Toronto, Ont.

Yours faithfully,

F. A. McGREGOR
Commissioner, Combines Investigation Act.

ANNEX I

FORM OF PURCHASE AGREEMENT BETWEEN CONTAINER MATERIALS, LIMITED, AND EACH QUOTA MEMBER, SEPTEMBER 1, 1931

THIS AGREEMENT made this first day of September, 1931

BETWEEN:

CONTAINER MATERIALS LIMITED
hereinafter called the "Company"

OF THE FIRST PART

—and—

____

hereinafter called the "Manufacturer"

OF THE SECOND PART

WHEREAS the Company is a sales organization and proposes to conduct an educational campaign to promote and endeavour to increase the use of corrugated and or solid fibre board products and will also, if deemed advisable, carry on a general advertising campaign,

AND WHEREAS the Company proposes to conduct an active sales policy to further the use and consumption of the said corrugated and or solid fibre board products,

AND WHEREAS the Manufacturer is a manufacturer of corrugated and or solid fibre board products and is desirous of disposing of as large a proportion of its capacity output as is possible in order to operate its plant efficiently and economically.

NOW THEREFORE, in consideration of the premises the Parties hereto agree each with the other as follows:

1. This Agreement shall come into force as of the 1st day of September, 1931, and shall continue in force until the 31st day of December, 1934, and unless terminated by written notice of intention to terminate to be given by either of the parties to the other party in writing deposited in His Majesty's Post Office addressed to the other party, registered post prepaid, at least six months prior to the 31st of December, 1934, shall continue in force and effect until the 31st day of December, 1937.

2. The Company agrees that it will purchase from the Manufacturer between September 1st, 1931, and December 31st, 1931, corrugated and or solid fibre board products to the value of ———— and annually thereafter corrugated and or solid fibre board products to the value of ———— subject always to the provisions of paragraph 10 hereunder.

3. Should the Company during the first period or the second period or any subsequent period as herein defined sell more corrugated and or solid fibre board products than it shall have contracted to purchase from the Manufacturer and other manufacturers the Company shall in addition purchase from the Manufacturer an additional amount of corrugated and or solid fibre board products which will bear the same proportion to the total amount of the excess sold as the amount of corrugated and or solid fibre board products herein agreed to be purchased bears to the total amount of corrugated and or solid fibre board products agreed to be purchased by the Company from the Manufacturer and other manufacturers.

4. The Company shall pay to the Manufacturer for all corrugated and or solid fibre board products purchased by it prevailing market prices at the Manufacturer's plant less agreed freight allowances and less 11 per cent. In construing this agreement "value" shall mean the prevailing market price at the Manufacturer's plant less agreed freight allowances; "first period" shall mean from September 1st, 1931, to December 31st, 1931; "second period" shall mean the calendar year of 1932 and any subsequent period shall mean a calendar year.

5. The Manufacturer agrees that during the currency of this Agreement it will not manufacture for or sell to any person, firm or corporation other than the Company, except as agent for the Company any corrugated and or solid fibre board products for use or resale within the Dominion of Canada.

6. The amount of corrugated and or solid fibre board products which the Company hereby contracts to purchase in any period shall be delivered over the entire period proportionately to the Company's market.

7. The Company agrees that in the event of it failing to purchase from the Manufacturer the amount of corrugated and or solid fibre board products specified for same in first period mentioned in paragraphs 2 and 3 hereof it will pay to the Manufacturer 5 per cent of the amount of such shortage and further agrees that in the event of it failing to purchase from the Manufacturer in the second or subsequent periods the amount of corrugated and or solid fibre board products specified for such period in paragraphs 2 and 3 hereof, it will pay to the Manufacturer 15 per cent of the amount of such shortage and such sum shall be accepted by the Manufacturer as full compensation for the failure of the Company to purchase the stated amounts of corrugated and or solid fibre board products.

8. All corrugated and or solid fibre board products purchased by the Company from the Manufacturer during the first period in excess of the amount provided for in paragraphs 2 and 3 hereof shall be supplied by the Manufacturer at the prevailing market prices at the Manufacturer's plant less agreed freight allowances less 11 per cent, and less 5 per cent of such prevailing market prices after deducting agreed freight allowances, and all corrugated and or solid fibre board products purchased by the Company from the Manufacturer in the second or subsequent periods in excess of the amount provided for in paragraphs 2 and 3 hereof shall be supplied by the Manufacturer at the prevailing market prices at the Manufacturer's plant less agreed freight allowances less 11 per cent and less 15 per cent of such prevailing market prices after deducting agreed freight allowances.

9. The Manufacturer covenants and agrees that it will fill with corrugated and or solid fibre board products manufactured in its own plant all orders given hereunder within a reasonable time after such orders are received and should the Manufacturer fail to do so the Company shall to that extent be relieved from its obligation to purchase corrugated and or solid fibre board products from the Manufacturer.

10. The amounts of corrugated and or solid fibre board products which the Company agrees in paragraph 2 hereof to purchase from the Manufacturer shall be adjusted at the end of the second and each subsequent period as follows: should the amount actually purchased by the Company from the Manufacturer in a period vary from the amount which in paragraphs 2 and 3 hereof the Company has contracted to purchase from the Manufacturer in such period, the amount which the Company has hereby agreed to purchase from the Manufacturer in the succeeding period shall be increased by 25 per cent of such variation if upwards or decreased by 25 per cent of such variation if downwards.

11. There shall be a monthly adjustment between the Company and the Manufacturer and for the purpose of such monthly adjustment it is agreed that the Company shall take monthly from the Manufacturer the same proportion of the goods hereby contracted for as the Company's total sale of goods for such month bears to the total amount of goods contracted for by the Company with the Manufacturer, and all other Manufacturers with whom it has contracts. Settlements shall be made on the 15th of the following month when payments adjusting shall be made.

12. In the event that the parties hereto are unable to agree upon "prevailing Market Prices at the Manufacturer's plant less agreed freight allowances" and any terms of any purchase the matter shall be referred to arbitration by a Board of three arbitrators to which each of the Parties hereto shall appoint one arbitrator who shall jointly select a third. The decision of any two arbitrators shall be final and binding on both parties and there shall be no appeal therefrom and the costs and expense of such arbitration shall be apportioned as the arbitrators may determine.

13. The Manufacturer agrees to give the officers of the Company or any agent or servant thereof free access at any time to their plant, books and records of every kind, including stock sheets and inventories for the purpose of enabling the Company to satisfy itself that the conditions of this Agreement are being fulfilled by the Manufacturer.

14. The Manufacturer agrees forthwith to deposit with the Company the sum of ________ (which sum will be increased from time to time by reason of the Company holding moneys to the credit of the Manufacturer as provided in paragraph 4 of a certain agreement of even date herewith between the parties hereto) to guarantee the observance by the Manufacturer of the terms of this agreement. Should the Company claim that there has been a breach by the Manufacturer or the Manufacturer claim that there has been a breach by the Company of any of the terms of this agreement

or should any other question or dispute arise between the parties with reference to any matter or thing arising out of or in connection with this agreement which shall not have been settled by the parties between themselves within ten days from the time when such question or dispute arose then except as provided in paragraph 12 hereof such claim or question or dispute shall be referred for determination to Messrs. Hardy and Badden, who acting as experts and not as arbitrators shall determine whether or not a breach has occurred and the damage suffered by either party in consequence thereof and decide any other question or dispute aforesaid and make such direction for the purpose of giving effect to such decision as they may consider appropriate. Such determination or decision shall be made within thirty days and shall be final and binding upon the parties and any such direction so made for the purpose of giving effect to such decision shall be obeyed by the parties. In the event that upon any such reference as aforesaid damages shall be awarded against the Manufacturer, the amount thereof may be deducted from the security deposited by the Manufacturer and the Manufacturer shall forthwith deposit with the Company an amount equal to the amount so deducted. In the event of any such damages being awarded as aforesaid against the Company it shall pay the amount thereof to the Manufacturer within ten days from the date of such award being made. Particulars of any and all claims, questions or disputes referred for determination as hereinbefore in this paragraph provided and the amount of damages (if any) awarded in respect of any breach of this agreement shall be placed before the board of directors of the Company at the first meeting following the date on which any such claim, question or dispute was decided and or award made.

15. The Manufacturer covenants and agrees that during the currency of this agreement it will not without the consent of the Board of Directors of the Company, (which consent shall not be unreasonably withheld) sell or rent any part of its plant or equipment to any person, firm or corporation for the purpose of manufacturing corrugated and or solid fibre board products and any sale or lease of such plant or equipment shall contain a provision restricting the use to which such plant or equipment may be put during the currency of this agreement to some purpose other than the manufacture of the said corrugated and or solid fibre board products, provided that nothing in this paragraph shall be deemed to prevent a sale or lease if the Purchaser or Lessee agrees with the Company and the Manufacturer to become substituted for the Manufacturer under this Agreement and certain other agreements between the Manufacturer and the Company of even date herewith, and also executes such further Agreements as may be necessary to give effect to this proviso.

16. The Manufacturer further covenants and agrees that if, during the currency of this agreement it or any of its officials either directly or indirectly becomes associated with or financially interested in, any person, firm or corporation not a party to an agreement with the Company similar in terms to this Agreement, engaged or to become engaged in the manufacture or sale of corrugated and or solid fibre board products, the provisions of this Agreement shall extend to such operations and the corrugated and or solid fibre board products manufactured or sold by such person, firm or corporation shall be deemed to be corrugated and or solid fibre board products manufactured and sold by the Manufacturer for all purposes of this Agreement.

17. In the event of strikes, fires, plagues, earthquakes or acts of God intervening during the currency of this Agreement which are in the opinion of the Board of Directors of the Company of sufficient importance to warrant such action, the Company shall be entitled to cancel this Agreement by a two-thirds vote of the Board of Directors.

This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their heirs, executors, administrators, successors and assigns.

In witnesss whereof the Parties hereto have hereunto affixed their Conporate Seals attested by the hands of their proper officers in that behalf.

Signed, Sealed and Delivered In the presence of	CONTAINER MATERIALS LIMITED
	by ____________________
	____________________
____________________	by ____________________

ANNEX II

FORM OF AGENT AGREEMENT BETWEEN CONTAINER MATERIALS, LIMITED, AND EACH QUOTA MEMBER, SEPTEMBER 1, 1931

THIS AGREEMENT made this first day of September, 1931

BETWEEN:

CONTAINER MATERIALS LIMITED

hereinafter called the "Company"

OF THE FIRST PART

—and—

____

hereinafter called the "Agent"

OF THE SECOND PART

WHEREAS the Agent is a manufacturer of corrugated and or solid fibre board products,

AND WHEREAS the Company has contracted to purchase from the Party of the Second Part its entire output of same up to at least ——— in 1932 and annually thereafter, subject to adjustment,

THIS AGREEMENT WITNESSETH as follows:

1. This Agreement shall come into force as of the first day of September, 1931, and shall continue in force until the 31st day of December, 1934, and unless terminated by written notice of intention to terminate to be given by either of the Parties to the other Party in writing deposited in His Majesty's Post Office addressed to the other party, registered post prepaid, at least six months prior to the 31st day of December, 1934, shall continue in force until the 31st day of December, 1937. Provided always that if a certain agreement dated the 1st day of September, 1931, and made between the parties hereto shall continue in force after the 31st day of December, 1934, this agreement shall automatically continue in force until the 31st day of December, 1937, but if the said agreement shall terminate on the 31st day of December, 1934, this agreement shall automatically terminate on the last mentioned date.

2. The Company hereby appoints the Party of the Second Part its agent for the sale within the Dominion of Canada of corrugated and or solid fibre board products manufactured by the said Party of the Second Part and contracted for by the Company. The Company authorizes the Party of the Second Part to sell all such products manufactured by it for which it shall obtain orders from its customers. Notwithstanding, anything in the said agreement of even date herewith all corrugated and or solid fibre board products manufactured by the Agent and contracted to be purchased by the Company shall be at the sole risk of the Agent as regards loss or damage by fire or other hazard.

3. The Agent shall sell corrugated and or solid fibre board products manufactured by it and contracted for by the Company at the Company's re-sale price thereof and shall retain for its own use as commission on such sales 10 per cent of such re-sale price.

4. The Agent shall be entitled to receive from the Company as a further or overriding commission the same proportion of the net profits of the Company in each calendar year as the amount of corrugated and or solid fibre board products of the Company sold by the Agent is of all such products sold by the Company in such year. This additional commission shall be calculated at the end of each calendar year at which time it shall be placed to the credit of the Agent in the books of the Company but the same shall become due and be payable to the Agent only upon the termination of this agreement. Until paid to the agent such amount or amounts shall be held by the Company and added to the amount referred to in paragraph 14 of a certain agreement made between the Agent and the Company dated September 1st, 1931, and the fund so created shall be subject to all provisions of the said paragraph.

5. The Agent shall invoice all corrugated and or solid fibre board products sold by it pursuant to this Agreement, shall make all collections, assume and be liable for all credit risks and make all deliveries.

6. The Agent shall send full reports of all sales made by it of corrugated and or solid fibre board products contracted for by the Company to the Company monthly.

7. The Agent has deposited with the Company pursuant to the agreement dated the 1st day of September, 1931, hereinbefore referred to the sum of ———— to guarantee the observance by the Agent of the terms of the said agreement and of this agreement. Should the Company claim that there has been a breach by the Agent or the Agent claim that there has been a breach by the Company of any of the terms of this Agreement or should any other question or dispute arise between the parties with reference to any matter or thing arising out of or in connection with this agreement which shall not have been settled by the parties between themselves within ten days from the time when such question or dispute arose then such claim or question or dispute shall be referred for determination to Messrs. Hardy and Badden, who, acting as experts and not as arbitrators shall determine whether or not a breach has occurred and the damage suffered by either party in consequence thereof and decide any other question or dispute aforesaid and make such direction for the purpose of giving effect to such decision as they may consider appropriate. Such determination or decision shall be made within thirty days and shall be final and binding upon the parties and any such direction so made for the purpose of giving effect to such decision shall be obeyed by the parties. In the event that upon any such reference as aforesaid damages shall be awarded against the Agent the amount thereof may be deducted from the security deposited by the Agent and the Agent shall forthwith deposit with the Company an amount equal to the amount so deducted. In the event of any such damages being awarded as aforesaid against the Company it shall pay the amount thereof to the Agent within ten days from the date of such award being made. Particulars of any and all claims questions or disputes referred for determination as hereinbefore in this paragraph provided and the amount of damages (if any) awarded in respect of any breach of this agreement shall be placed before the board of Directors of the Company at the first meeting following the date on which any such question or dispute was decided and or award made.

8. Provided, and it is further agreed that if the Agreement dated September 1st, 1931 referred to in paragraph 7 hereof is terminated, the Company will return to the Agent the deposit referred to in paragraph 7 hereof.

IN WITNESS WHEREOF the Parties hereto have affixed their corporate seals attested by the hands of their proper officers in that behalf.

CONTAINER MATERIALS LIMITED

SIGNED, SEALED AND DELIVERED
In the presence of

by————————

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by————————

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